

# STATE TRIALS

## POLITICAL AND SOCIAL

SELECTED AND EDITED

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ESQUIRE, OF THE INNER TEMPLE, BARRISTER-AT-LAW ;  
ONE OF HIS MAJESTY'S JUDGES OF THE HIGH COURT  
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THE ANNESLEY CASE, 1743

VOL. IV.

A

## THE ANNESLEY CASE, 1743

(17, *STATE TRIALS*, p. 1139)

THE following case, long though it is, forms only a part of a still longer story, the curiosity of which is sufficient to justify a few introductory remarks.

In the first place, though it is enough for the comprehension of the present trial to remember that the only issue was, who was James Annesley's mother, the history of the Annesley family in the sixteenth and seventeenth centuries is too tempting a puzzle to be left unnoticed. The Annesleys are an old Nottinghamshire family; but the first of them to achieve fame was Francis Annesley (1585-1660), who passed over to Ireland in 1606, where, in the troubles of the times, he managed to secure large estates, which being increased at the time of the Restoration, made the family property the largest in the island. In 1620 he received a reversionary grant to the viscounty of Valentia, and in 1628 was created Baron Mountnorris; both in the Irish peerage. He procured Lord Falkland's dismissal from

the post of Lord Deputy in 1629, but was himself dismissed from office in 1635 in consequence of his quarrel with Wentworth. He succeeded to the viscounty of Valentia in 1642. He was succeeded by his son Arthur, who, having favoured the Parliamentary cause in Ireland, left it in time to be a person of importance after the Restoration; and was consequently created Baron Annesley of Newport Pagnell, and Earl of Anglesea in 1660, both of the English peerage. He left five sons, (1) James, second Earl of Anglesea; (2) Altham, created first Earl Altham of the Irish peerage in 1660, succeeded by an infant son, the second Earl Altham; (3) Richard, third Earl Altham; (4) Arthur; (5) Charles. James, the second Earl of Anglesea, had three sons, James, John, and Arthur, third, fourth, and fifth earls respectively. Richard, the third Earl Altham, had sons, Arthur, the Lord Altham of this trial and father of James, the claimant, and Richard, the defendant. Charles, the fifth son of the first earl, had a son Charles, mentioned in this case. James, the second Earl of Anglesea (the report says James the third earl in one place, but this seems to be an error), levied fines and suffered recoveries, and by a will of 14th May 1701 left the estates to his sons in succession, remainder to Richard, second Lord Altham (father to our Lord Altham and the defendant), and his heirs male, remainder to Charles, fifth

son of the first Earl of Anglesea, and his heirs male. On the 9th of December in the same year he made another will, settling the estate in the same way, but remembering that Richard, second Earl Altham, was dead, scratched out his name and substituted that of Arthur, our Lord Altham, thereby passing over Richard, the defendant. By subsequent codicils, six in number, he seemed to have re-established the earlier will, thereby reinstating the defendant. From this confusion, so characteristic of the family, if the plaintiff was legitimate he would cut out both the defendant and Charles Annesley. If he was illegitimate he left a suitable subject of litigation between Richard, the defendant, and Charles, of which they seem to have availed themselves.

In the second place, the career of James Annesley, the claimant, after his rescue from the plantations, had not been without adventure. He was taken on to a ship in Admiral Vernon's fleet in 1740. Some time after he arrived in England, and his cause was taken up by various friends of whom Mr. M'Kercher seems to have been the most active. While his case was being prepared for trial he had the misfortune to shoot one Egglestone, under circumstances which seem to leave no room to doubt that his act was accidental. The opportunity which this gave to his opponents, and the use they made of it, are described more fully in Giffard's evidence in the

following case, pp. 71-76, than anywhere else. The claimant was acquitted; and in order to make a public assertion of his claims, he and some of his supporters attended the autumn horse-races at the Curragh in September 1743. Here, according to his story, the defendant deliberately attempted to kill him by driving at him with a coach-and-six, and afterwards by raising a mob to attack him. For various assaults committed on this occasion the defendant and his friends were eventually tried, and on being convicted were all fined. The defendant, owing to his social position and the aggravated circumstances of the case, was fined £30 for one offence and five marks for another. It was about eight weeks after these assaults were committed that the present case came on for trial.

After the trial the family history of the persons chiefly concerned becomes confused. James Annesley, apparently, never obtained possession of any of the family property, and the proceedings in the King's Bench, had, of course, no effect on anybody's right to any of the family titles. The defendant accordingly continued to sit as Earl of Anglesea and Lord Annesley in England, and as Viscount Valentia, Lord Mountmorris and Lord Altham in Ireland, till his death in 1761. He is stated to have married four times: one of these marriages was bigamous in any case; if they all took place, another also was

bigamous. Three claimants to his titles appeared of whom two were sons and one a remote relation. One of the sons, Arthur, established his right to sit as a peer in Ireland, but failed to establish his claim in England; since when the English titles of Anglesea and Annesley of Newport Pagnell (not to be confused with the modern Anglesey title, and the Irish title of Annesley of Castlewellan) have been considered extinct. Arthur was created Earl of Mountnorris in the Irish peerage; his issue became extinct in 1844. The Altham and Mountnorris titles lapsed, and the viscounty of Valentia descended to the family of its present holder, as the descendants of the first viscount.

The case was tried before Lord Chief Baron Bowes, the Hon. Mr. Baron Mounteney, and the Hon. Mr. Baron Dawson, Barons of the Court of Exchequer in Ireland. It began on the 11th of November 1743, and continued till the 25th of the same month.

There appeared for the plaintiff, Serjeants Marshall second serjeant, and Tisdall third serjeant, Mr. Walsh, K.C., and ten juniors; for the defendant, Mr. Prime Serjeant Malone, Mr. Attorney-General (St. George Caulfield), Mr. Solicitor-General (Warden Flood), the Recorder of the city of Dublin (Eaton Stanyard), two other King's Counsel, and eight juniors.



The case was opened as follows:—

SERJEANT MARSHALL<sup>1</sup>—I am in this case of counsel with the lessor of the plaintiff, whose title stands thus : The lands in question were the estate of Arthur, late lord Altham, of which he died seised, and the lessor of the plaintiff is his only son and heir. My lord, if this were a common case, I should have rested here ; but as the course of descent has been interrupted on a supposition that lord Altham died without issue ; and as this is a matter of great expectation, very extraordinary in its nature and circumstances, and may be much more so in its consequences ; so it will be incumbent on me particularly to point out to your lordship, and to the jury, the time and place when and where the lessor of the plaintiff was born ; for on that important birth this cause must depend.

My lord, in the year 1706, Arthur, late lord Altham, was married to Mary Sheffield, natural daughter of John, duke of Buckingham. After the marriage lord Altham's affairs required his attendance in this kingdom, and in the year 1709 he came over ; but his lady remained in England till the year 1713, when she came into Ireland ; and in the year 1714 lady Altham resided in the city of Dublin with lord Altham her husband, and proved with child. When she had

<sup>1</sup> In Howell's report of this trial almost all the evidence is given in the third person. Owing to this fact and the length of the trial, which has led to a great deal of abbreviation, I have not thought it worth while to change my type to show where I am copying from Howell, and where I am not. Whenever any witness is made to speak in the first person it may, however, be taken that I am copying verbatim.

been some months advanced in her pregnancy, and at the latter end of the year 1714, lady Altham went to his lordship's house at Dunmaine, in the county of Wexford, where it was publicly known in the neighbourhood that lady Altham was with child, and the then dowager lady Altham (who was married to Mr. Ogle, one of the commissioners of the revenue in this kingdom) made lady Altham a present of a very rich quilt against her lying-in; and it will appear to your lordship, and to the jury, that lady Altham's pregnancy was so well known in the country, that interest was made by several women to nurse this child when it should be born; and that great care was taken in examining the milk of the several women who did apply to be nurses, and that one Joan Landy was approved of to be the nurse. My lord, in the beginning of the year 1715, lady Altham fell in labour, and was delivered of the lessor of the plaintiff by Mrs. Shiel, a midwife of skill and reputation, who then lived at Ross, about three miles from Dunmaine; and it will appear to your lordship, and to the jury, that lord Altham expressed great satisfaction and joy upon the birth of his son; that a bonfire was made upon this happy event, and drink publicly given to the neighbours and people who came in to testify their joy upon such an occasion. It will likewise appear to your lordship, and to the jury, that great preparations were made for the christening of his son; and that about a month after the birth, the lessor of the plaintiff was christened at the late lord Altham's house in Dunmaine, in the parish of Tynterne, by one Mr. Lloyd, who was his lordship's chaplain, and at that time curate of Ross, by the Christian name of James, after his grandfather, the third earl of

Anglesea, from whom lord Altham had received great favours, and the sponsors on that occasion were Mr. Colclough, Mr. Cliff, and Mrs. Piggott. I mentioned to your lordship before that Joan Landy was appointed the nurse; her father's house was about a quarter of a mile from Dunmaine, where the child continued for about a month; and then the nurse's father's house being first made fit for the reception of such a child, he was carried to that place with his nurse: and it will appear to your lordship, and to the jury, that for the conveniency of lady Altham, and that she might visit this child as often as she pleased, a coach-road was made from the house of Dunmaine to the nurse's father's house. When the child was about sixteen months old he was weaned, and brought back to lord Altham's house at Dunmaine, where one Joan Laffan was appointed his dry-nurse; and it will appear to your lordship, and to the jury, that while lord and lady Altham were united, the greatest fondness was shown to this infant by both. My lord, in February 1716, there were some very unhappy differences between the late lord Altham and his lady, upon which they, by agreement, separated; but lady Altham, as was extremely natural, desired to have the company of her child, which lord Altham, but with great expressions of regard and tenderness for the child, refused; and it will appear to your lordship, and to the jury, that lady Altham left her son with the utmost concern and regret. After this unhappy separation, lord Altham forbade lady Altham's access to this child, and directed that she should by no means see him, and that the child should not be carried to visit her. The lessor of the plaintiff, thus deprived of his mother, continued at Dunmaine

in the care of servants until the year 1718, and in that year lord Altham removed his family to Kennay, in the county of Kildare, where he continued about two years; and it will appear to your lordship, and to the jury, that the lessor of the plaintiff was educated there with the greatest affection, and was constantly reputed and deemed to be lord Altham's son and heir. My lord, in the latter end of the year 1719, or beginning of the year 1720, lord Altham removed to Dublin, and had a house in this town for some time, to which the lessor of the plaintiff was also brought; and it will appear to your lordship, and to the jury, that he was then clothed in a very extraordinary manner, and was treated and esteemed as the son and heir of the lord Altham. My lord, some time in the year 1720, lord Altham removed to a place called Carrickduffe, in the county of Carlow; and it will appear to your lordship, and to the jury, that as the lessor of the plaintiff was then of years capable of instruction, so lord Altham provided a tutor for him in the house; and when, afterwards, lord Altham sent the lessor of the plaintiff to a public school at Bunclody in the county of Carlow, that he was there attended as the son of a nobleman, and treated as such. My lord, in the year 1722 (it was a year extremely fatal to my client), lord Altham began a criminal correspondence with one Miss Gregory, and in the winter of that year lord Altham settled in Dublin with her, in a house in Cross-lane; and it will appear to your lordship, and to the jury, that this Miss Gregory, before she had made her interest in lord Altham quite secure, behaved tolerably well to the lessor of the plaintiff; and the lessor of the plaintiff was brought to the house where lord

Altham resided with her, and was sent to a public school in this city, and was used with great care and tenderness by his father, and at school was deemed and taken to be the son of lord Altham. It will be necessary to mention to your lordship, and the jury, what became of lady Altham after this separation. She resided in the town of Ross for about three years, and her affection for the lessor of the plaintiff was so strong, that, notwithstanding lord Altham's prohibition, she found means privately to see the child, and always expressed the greatest regard and fondness for him, and complained much more severely of being deprived of the comfort in her child, than the loss of her husband. In the year 1720, or thereabouts, lady Altham came to reside in Dublin; but, unhappily for this lady, she had in her lying-in contracted disorders, which at last ended in a dead palsy, and not only took from her the use of her limbs, but also, in some measure, deprived her of her memory and senses; but notwithstanding, it will appear to your lordship, and to the jury, that during the time she continued in this kingdom, she kept a secret correspondence with this family, relative only to this child. In the year 1723, lady Altham was carried from this kingdom to London in a very languishing condition, and there, during the remainder of her life, lived upon the bounty of some persons who had charity enough to support her. My lord, from this languishing condition of lady Altham, Miss Gregory, who had gained a prodigious influence over lord Altham (who will appear to your lordship to have been a very weak man), had hopes from him of everything in his power, expected to be lady Altham, and had assumed the title even in the lifetime of lady

Altham; and therefore considered the lessor of the plaintiff as the greatest bar to her hopes, in case she should have issue by this lord, and thereupon grew very harsh and severe to the lessor of the plaintiff; she raised doubts in the lord Altham, that, though this was the son of the lady Altham, it might not be the son of his lordship, that so she might take off that paternal affection from the lessor of the plaintiff, which he had always shown to him before; and, my lord, she gained such an influence at last upon this unhappy lord, that she prevailed on him to remove the lessor of the plaintiff out of his house; and in the year 1724, the lessor of the plaintiff was sent by lord Altham to one Cooper's in Ship-street, in this town. But the heart of lord Altham was not at this time quite estranged from his son, for he gave directions there that the lessor of the plaintiff should be taken great care of, that he should be put to school; and it will appear to your lordship, and to the jury, that he was put to school at one Dunn's in Warburgh-street, in this town, and that lord Altham came privately sometimes to see him there. My lord, it will appear to your lordship, and to the jury, that about this time the necessities of the late lord Altham were so extremely great, that he looked out to raise money by all manner of ways and means; and lord Altham being advised, that if the lessor of the plaintiff were out of the way, large sums might be raised by the sale of reversions, in conjunction with the remainder-man in tail; and this scheme being agreeable to the inclinations of Miss Gregory, who was willing to get rid of the lessor of the plaintiff at any rate, it was determined that this great obstacle to lord Altham's desire of raising money should be removed; and to that end

the lessor of the plaintiff was sent to the house of one Cavanagh, with directions to be kept quite private, so as it should not be known where he was. What farther was designed against him I cannot say ; but it will appear to your lordship, and to the jury, that though the lessor of the plaintiff was at this time a very young lad, yet he was a little too sprightly to be confined in that manner ; he found means to make his escape from thence, and being denied admittance into his father's house, he roved about from place to place (as will be more particularly given an account of to your lordship and to the jury, by the witnesses) for the space of two years before the death of the late lord Altham, his father, which happened on the 16th of November 1727. But during all that time, he was taken care of by several persons of extreme good credit, and considered as the lord Altham's son and heir. Upon the death of the late lord Altham, in the year 1727, the lessor of the plaintiff was extremely young ; he was by the mother's side destitute of all friends whatsoever in this kingdom ; and the now defendant, the earl of Anglesea (I must take the liberty now of mentioning him), he, my lord, upon the death of the lord Altham, claimed the title of lord Altham, as brother and heir to the deceased lord, upon a supposition that the late lord died without issue male. My lord, it will appear to your lordship, and to the jury, that many people who had known the lessor of the plaintiff for several years before his father's death, appeared to be greatly surprised that the defendant assumed the title of lord Altham, in regard that they believed the lessor of the plaintiff to be the son and heir of the lord Altham ; and there were murmurings among the servants, and a great many people who

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were acquainted with the lessor of the plaintiff, on that account. It will appear to your lordship, and to the jury, that, in order to remove every obstacle out of the way of the defendant, and to take from the lessor of the plaintiff all possibility of asserting his right, and claiming the title, an attempt was made very early after the death of the late lord Altham; an attempt was made, I say, to kidnap the lessor of the plaintiff; and it will appear that the first attempt was in vain; a second attempt of this kind was made, and likewise defeated; but the third attempt was more successful; and in about four months after the death of the late lord Altham, the lessor of the plaintiff was sent into America, and there sold for a common slave. I, my lord, have not taken upon me to mention by whom those several attempts were made, it will much more properly come out of the mouths of the witnesses; and when they shall speak it here upon the table, everybody will judge with what view and design such a wicked attempt could be made. My lord, the lessor of the plaintiff, while he was in slavery, suffered many and various hardships, as everybody in those unhappy circumstances does, and did make an attempt to regain his liberty; but being retaken, he suffered according to the law of that country, and continued about thirteen years in slavery. But it will appear to your lordship, and to the jury, that even in that miserable condition, when he had an opportunity of relating his misfortune to anybody that had compassion of them, he did mention the unhappiness of his case, and by what means he was reduced to such circumstances. It will appear to your lordship, and to the jury, in what manner the plaintiff was brought by the care and bounty of



Admiral Vernon into the kingdom of Great Britain. There an unhappy misfortune detained him for some time; he happened, by an accidental shot, to kill a man near London, for which he was indicted, stood his trial, and was honourably acquitted. How that prosecution was carried on, or for what purpose, I shall not take upon me to say, though it will have its weight in the case; but it was necessary to mention this circumstance, to show that, when we were at liberty of coming into this kingdom, and prosecuting our right, we did it as recently as was in our power. When these facts are laid before your lordship, and the jury, we of counsel for the lessor of the plaintiff, do apprehend, there is such a connection in every one of them, that the force of truth will prevail, and that your lordship will direct the jury to find a verdict for the lessor of the plaintiff.

On the question being raised how far the title of the late lord Altham could be admitted, the Recorder admitted that if he left a son, the present earl of Anglesea, the defendant, had no right to the lands in question.

The plaintiff's evidence was then called.

*Dorothy Briscoe* knew lord and lady Altham at the house of her father, captain Briscoe, in Bride-street, Dublin. They came there about the latter end of October or November 1713, and went from there to Mrs. Vice's at Temple Bar, near the Slip, where she saw them and supped with them. They went from there to Dunmaine, in County Wexford, about Christmas 1713. She saw them at Mrs. Vice's the latter end of the summer 1714.

*Henrietta Coles*, apparently a married sister of the last witness, knew the late lord Altham and his lady

in 1713, by a reconciliation being made between them at her father's house. They lodged there about Christmas, four or five days, and went from there to Temple-bar to lodge. They went to Dunmaine about Christmas; and deponent and her mother, being invited, went there about the spring 1714. Lady Altham was with child when deponent was there, but received a fright and miscarried. The fright was occasioned by my lord's being in a great rage at their bringing some saucers to table contrary to his express orders, upon which he threw the saucer into the chimney just by my lady, who was seated at the upper end of the table. The deponent lay with her mother, and in the night of that day her mother was called up by Mary Heath, her ladyship's woman, who told her that lady Altham was ill, and desired her to come. My lady miscarried that night. Deponent's mother said, if lady Altham was so easily frightened, she would never have a child. Her mother is dead.

*Cross-examined*—She is about fifty-four years old. The saucers were china saucers with odd kind of figures on them, and lord Altham had them before he married, and ordered them not to be brought to table to his lady. The name of the butler was Rolph, and to the best of her knowledge he was present, and brought in the second course.

*Alice Bates* know lady Altham at Captain Briscoe's in Bride-street, in 1713, and at her lodgings at Mrs. Vice's in Essex-street, in November 1714, and lady Altham was then with child. Lord Altham mentioned these words to the deponent, By God, Ally, Moll's with child; she wished lady Altham joy of her being with child, and lady Altham thanked her in the presence of my lord. She saw lady Altham twice or

down word to the deponent that if she could see anybody she would see him. The occasion of his being there was that he met lord Altham at Ross, who invited him to dine with him the next day ; he desired to be excused, because he was to dine with some officers ; but lord Altham said he must dine with him, and come to drink some groaning-drink, for that his wife was in labour. Deponent told him that was a reason he ought not to go ; but lord Altham would not take an excuse, and sent deponent word the next day to Ross that his wife was brought to bed of a son ; and deponent went to Dunmaine and dined there, and had some discourse about the child, and lord Altham swore that the deponent should see his son ; and accordingly the nurse brought the child to deponent, and deponent kissed the child, and gave half a guinea to the nurse ; and some of the company toasted the heir-apparent to lord Anglesea at dinner. This was the day after the child was born. Deponent saw the woman to whom he gave the half-guinea the day of his examination ; he remembers her well, because he took notice of her when he gave her the half-guinea ; she was very handsome. He did not stay at Dunmaine that night, but came to Ross at nightfall, and was attacked in the road by robbers ; he crossed the ferry on his return home. He remembers that lord Altham was in high spirits with the thoughts of having a son and heir.

*John Turner* lived at Dunmaine ten years ago and knew lord and lady Altham. He was seneschal to lord Anglesea and visited lord Altham. He married in December 1714, and he and his wife went to Dunmaine and staid there about three weeks about Lent time, and lady Altham was big-bellied at the

time he went there. Lady Altham told deponent the next time he saw her, that she had a son; afterwards he saw the boy at Dunmaine a year and a half old; he staid a night at Dunmaine, and had the child in his arms; he saw the lady leading the child across the parlour, and saw lord Altham kiss the child and call him Jemmy. He saw the child afterwards at Ross, and at Kinnay, in the county of Kildare, and once at Ross, when lady Altham lodged there, at one Butler's. At Kinnay the child was dressed as the son of a nobleman, and the servants called him master; he saw him there, as he believes, three or four times; the child could walk, and used to be wheeled about in a little carriage. He saw the child afterwards at Carrickduff in 1720, and lord Altham was fond of the child. My lord and deponent being at a tavern in Dublin in 1722, lord Altham said he would send for his son that the deponent might see him, and the child was accordingly sent for. He was then about eight years old, and lord Altham said to deponent, you were seneschal to earl Arthur and earl John, and you may be seneschal to the child. Deponent believes he saw the child once after in Dublin, but he did not know him; only was told it was he; and that was about two or three years after the meeting at the tavern; and the child had no clothes, and was so much altered, that although the people of the town told him he was lord Altham's son, he did not know how to believe it.

*Cross-examined*—When he saw the child in that poor condition, he believes that my lord lived at Inchicore; but he did not inquire where he was, nor about the child, having heard that the child born at Dunmaine was dead many years ago. He never heard

*Mary Doyle*, a servant, lived with lady Altham three months before she was brought to bed, and was in the room when lady Altham was delivered at Dunmaine. She confirmed the last witness as to the midwife, the christening, the rejoicings, and the appointment as nurse of Joan Landy, who was reputed to be married to a sailor, and to have the child by her husband.

*Cross-examined*—Says that Major Fitzgerald was at Dunmaine a few days after lady Dunmaine was delivered, and stayed there for some time; nobody else was brought to bed there; the christening was in the parlour about three weeks after the birth, and Mrs. Heath was present at it. Charles Meagher was butler then. One Madam Butler, Nelly Murphy, and Mrs. Heath were there at that time.

*Mrs. Deborah Annesley* knew lord Altham when he lived at Kinnay in County Kildare, within three miles of Ballyshannon, where the deponent lived. Lord Altham's son visited them at this time, and deponent's brother, Mr. Paul, used often to drink his health. She did not care to visit lord Altham's house because he had brought down a housekeeper there. She believes the child was my lord's lawful son; she never heard the contrary. The child was called James. Her brother was a sober, grave man, and she is sure would not have toasted the health of the child if he had been a bastard. The child went with lord Altham to Carrickduff in the county of Catherlough, and she never heard of him afterwards.

*Thomas Barns* (who was objected to because he held a lease of the defendant, but ineffectually because the land was not part of the estate now in dispute)

said that he met lord Altham in the spring of 1715, in the kitchen of an inn at Ross; that after they had dined together upstairs, and while they were drinking some wine, Lord Altham said, 'Tom, I'll tell you some good news, I have a son by Moll Sheffield; deponent thereupon shook his head (not remembering she was my lord's wife) and said, Who is Moll Sheffield? My lord taking notice of the deponent's meaning, said, Zounds man, she is my wife; upon which deponent said, My Lord, I humbly beg your pardon, I am sorry for what I said. Until my lord had mentioned that she was his wife, he took her to be a naughty pack; but afterwards recollected that my lord's wife was the duke of Buckingham's daughter; and deponent then advised my lord, since he had a son, to take care of his wife, and discharge all other women. He fixed the year of the conversation by the fact that he went into the country on hearing of his father's death. He went to Dunmaine the next day, and dined and slept there; he does not remember whether he saw the son; he remembers lady Altham at dinner, but not at supper.

*Cross-examined*—It was in April or May that he went to Ross; he cannot say which. He might have seen Rolph the butler, but did not know him. He knew Mr. Taylor, but had no discourse with him about the son. He has heard five hundred at Ross say lord Altham had a son.

*Southwell Piggott* came over from England about 1712; there was a great intimacy between his step-mother, Mrs. Piggott and lady Altham; Mrs. Piggott died about 1720 or 1721.

*Philip Breen* heard of the birth of a child at Dunmaine twenty-nine or thirty years ago, a little before

or after May, when there were great rejoicings. Joan Landy nursed the child at her father's house, which was enlarged for the occasion. He remembers the child Joan Landy had of her own, it died of the smallpox about a year after lord Altham left Dunmaine; he was at the wake and burial. The child which Joan Landy nursed was removed to Dunmaine, and delivered to Joan Laffan, one of the maids there. A coach-road was made between Landy's house and Dunmaine House, and he has seen the coach go along that road.

*Cross-examined*—Some said that lord Altham was the father of Landy's child; and others said a sailor. Joan Landy was married to Daniel McCormick after lord Altham left Dunmaine. Lord Altham was supposed to have got the child in the house of Dunmaine when Landy was dairy-maid; Joan Landy's child was a year older than lady Altham's.

*Eleanor Murphy* knew lord and lady Altham at Dunmaine about twenty-eight or twenty-nine years ago; she was the servant there when my lady was brought to bed; she was called to bring up some water to my lady's room, and she went into the room with a basin of water immediately after lady Altham was delivered. Mrs. Shiels was the midwife, and Dennis Redmonds was sent for her to Ross. Madam Butler, Mrs. Heath, and Mary Doyle were in the room when she went in. She came to live at Dunmaine about the beginning of the summer, and remained there about two or three months after my lady's delivery of the son. Joan Landy was the nurse; and there were several other women applied for the nurse's place. There were bonfires and rejoicings at Dunmaine for the birth of a son; the child

was about three weeks at Dunmaine after its birth, and then the nurse took it to her own house, and a little road was made from Dunmaine House to the nurse's for the chariot. One Anthony Colclough, and Cliff, were the godfathers, and Mrs. Piggott, the godmother, as she heard from several of the servants. Deponent was in the house at the christening, and was servant under the laundry-maid. Mrs. Heath was in the room when the lady was brought to bed; the christening was about three or four weeks after. Joan Landy had her own child about three-quarters of a year before lord Altham's was born; and her child continued in the house after she took my lady's child to nurse.

*Cross-examined* - She says she saw Joan Landy's child. Lady Altham kept her chamber a month or six weeks. The child was christened before my lady left her room, in the yellow room up one pair of stairs, but she does not know who was at the christening. She was three months in the service before the birth of the child, and a quarter of a year after. Mary Doyle came into the service before her; she knows not whether she or Mary Doyle left the house soonest.

The examination of these witnesses having taken up all Friday till eleven o'clock at night, the Court observed to the counsel, that as there was a great number of witnesses more to be examined on both sides, so it would be impossible for them or the jury to continue hearing the cause through without an adjournment, and therefore recommended it to the parties to consent to such an adjournment. Accordingly both parties readily expressed their consent, and the same being reduced into writing, and signed



by the attorneys on both sides, the court adjourned till nine o'clock the next morning.<sup>1</sup>

The Lord Chief Baron made a compliment to the jury, and expressed his sense of their honour and integrity; that the nature of the thing required an adjournment, though there was but one precedent of adjourning a jury trial of that kind; but as they were gentlemen of such strict honour, any confidence might be reposed in them, without danger of any prejudice resulting from it.

*Christopher Brown* remembered lady Altham having a child about twenty-eight or twenty-nine years ago. He was servant to Esq. Anthony Cliff, who was invited to the christening of the child, and he went to Dunmaine that day, and waited at table on his master. He remembers Mr. Anthony Colclough, Mr. Cliff of Ross, Mr. Anthony Cliff, and captain Tench were at the christening, but does not recollect the other persons. It was in the beginning of the summer as near as he can tell. Being desired to point out the month, says it was May, as near as he can guess. He did not see any lady there but Mrs. Piggott; there were plenty of entertainment and great rejoicings there; deponent was sent several times with messages from his master to inquire how my lord, and my lady, and the child did; he saw the child afterwards at Dunmaine in my lady's lap, and with the nurse Joan Landy, and never saw him but at Dunmaine. He waited at table the day of the christening, and heard

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<sup>1</sup> A written consent to the adjournment was taken every day; but I have not thought it worth while to repeat it. The Court usually sat about nine o'clock; they often sat till eleven, but once rose as early as six.

them to toast, The lady in the straw, and the young Christian.

*Cross-examined*—He says that there were several others at dinner whom he cannot remember. My lady did not dine with them. He heard that it was Mr. Loyd who christened the child, and remembers that he dined there; Mrs. Piggott was at the head of the table; all that dined there, to the best of the deponent's remembrance, are dead; the deponent dined along with the servants. He remembers Mr. Taylor and Dennis Redmonds to dine there; he thinks Anthony Dyer was the butler, but never saw him before that day. The deponent drank several healths and was very merry, but knows not what particular healths were drunk. There was not a bonfire on the night of the christening; he heard there was one the night following, but he was not there. He did not know my lady's woman, he did not know Mrs. Heath. When he delivered messages, when he came from his master and mistress with services to Dunmaine, he delivered them to one Mr. Taylor, because he was my lord's gentleman, and deponent always inquired for him. He does not know whether Mr. Taylor is reputed to be alive or dead, and he has not seen him these twenty years. Being asked if he ever saw lady Altham; says yes, at the house of Dunmaine, in the parlour, with the child in her arms. Anthony Dyer attended at the dinner as butler, and deponent attended his master; every gentleman's servant waited at table; he is sure Mr. Cliff of Ross dined there, and that one Gee waited on him.

*John Scott* was servant to Mr. Piggott, who lived within three or four miles of Dunmaine, about thirty-three or thirty-four years ago, at a place called Tyntern,

and he knew lord Altham at Dunmaine about thirty years ago. He went for England with sir Harry Pierse's son, and returned in July, about twenty-eight or twenty-nine years ago. His master was in mourning, but he knows not on what occasion. He was sent several times from Mrs. Piggott to lord and lady Altham with messages and how-do-yous, to know how the child did. It was commonly understood by all the neighbourhood that my lord Altham had a son by his lady. He has seen the child brought by the nurse to Mrs. Piggott.

*Cross-examined*—Says it is about twenty-eight or twenty-nine years ago he went into England, and continued in England from the latter end of March till the beginning of July. Sir Harry Pierse was in London, and lodged in at St. Martin's. Can't tell whether queen Anne was living or dead then. He was never in Yorkshire. He took no notice of the proclaiming of the king. He cannot tell whether the proclaiming of the rebellion of Preston was before or after his going into England. He was never in England but once. He cannot recollect whether their return from England was before or after 1713; but as near as he can guess it was about twenty-eight or twenty-nine years ago.

*Mr. Brehan*, 'sovereign of the town of Ross,' was called, and said he knew the last witness.

*Joan Laffan* came to lady Altham's service in the year 1715, but cannot remember in what month. She was there in the station of a chamber-maid, and was employed to attend lord and lady Altham's child (who was called master James Annesley) when it came from the wet-nurse; and he was kept like a nobleman's child. The child was about three or four

months old when deponent came to the service, and was about a year and a half in the deponent's care. My lord and lady were very fond of the child, and my lady used to send for him in the morning and take him into her bed, and generally called him my dear. Afterwards the child was taken from the deponent and sent to a place called Kinnay, in the county of Kildare. Deponent did not go with the child, but remained at Dunmaine; the butler, whose name was Charles Field, was sent with the child. My lord and lady separated in a very angry manner on account of Tom Palliser when the child was about three years old; and deponent was present when Tom Palliser's car was cut off. After the separation, my lady Altham went from Dunmaine to Ross and lodged there at one captain Butler's. She was present when my lord and lady parted; she saw my lady at the door with the child in her arms; my lord ran out in a great rage and asked where the child was; and upon being told he was with his mother, he ran up to her and snatched the child out of her arms; my lady begged very hard she might take the child along with her; but my lord swore he would not part with the child upon any consideration; my lady finding she could not prevail, burst out a-crying, and begged she might at least give the child a parting kiss; my lord with some difficulty consented, and then my lady drove away to Ross. As soon as she was gone my lord gave the child to deponent with a strict charge to her and to Mr. Taylor not to let my lady have any access to him; but notwithstanding these orders, some of the servants found means to carry the child privately to Ross to see my lady, which when my lord was told of, he flew into a very

great passion. The Christmas eve after the separation, the present earl of Anglesea, who was then captain Annesley, was at Dunmaine House, and not seeing the child, said to the deponent, Where is Jemmy, or where is my brother's child? How did his mother behave at parting with him? To which deponent answered that my lady had begged of my lord very hard to have the child with her; whereupon the present earl made use of an extraordinary oath, and said, That he wished his brother kept none of the breed; and that when he turned away the mother, he should have packed off the child, and sent both to the d—l. She is of good family, and would not have waited on the child if she had believed him to be a bastard.

*Cross-examined*—She says great notice was taken of the child both by my lord and my lady. She saw the child immediately after she came into the service. Sweet whey and broth were made every day at my lord's house for Joan Landy, the nurse, and fresh meat constantly sent to the house, and the nurse was charged not to eat greens or salt meat. My lady herself would go sometimes in the evening to the nurse's and carry the child home. Lord Donneraile was at Dunmaine once about a month when deponent had the care of the child, and took a delight in playing with him, and once drew out a handful of gold that the child might take his choice of some of the pieces. She is particular as to my lord Donneraile being at Dunmaine, because she particularly remembers his running footman's running a race for six guineas. The child was always or generally shown to the company that came to Dunmaine House. She saw Mrs. Giffard visiting lady Altham three or four times, but she was not so grand a woman as to be intimate

with my lady. The child was kept very fine, and was generally dressed with a scarlet velvet hat, white feather, and laced cloak when he used to be shown to the company, and had cambric and holland things of all kinds. The child was often shown to Mrs. Lambert; and the wet-nurse or the dry-nurse were the persons who showed the child to the gentlemen and ladies that visited there. She remembers the day Tom Palliser had his ear cut off; she had the child in her hand, and the child showed her some of the blood which had fallen from Palliser's ear on the ground. Mr. Palliser saw the child. The occasion of my lord's cutting off his ear was, that some of the family had made my lord jealous of him, and contrived that morning to get him into my lady's chamber when she was in bed and asleep, and then they brought my lord, who being by this stratagem confirmed in his suspicions, ordered Tom Palliser to be dragged out of my lady's bed-chamber by the servants, and with a sword was going to run him through the body; but the servants interposed, and begged my lord not to take away his life, and only to cut off his nose or one of his ears; and accordingly the huntsman was ordered to cut off his ear, which he did in the room next the yellow room. The servants kicked him downstairs, and turned him out of the gate, and this happened on a Sunday morning; my lady left the house of Dunmaine the same day and went to Ross. She knew Anthony Dyer, and Charles Meagher, who was butler at Dunmaine. Rolph, a butler, was not there in her time. She does not remember Owen Cavanagh, but he knew Mrs. Heath, my lady's woman, and Martin Veife, a smith, that lived there. She remembers William Elmes, a farmer, who lived within two miles

of Dunmaine, but she never saw him there nor any of his family. She went to England, last 25th of March was twelve months. She took shipping at Ballyhack and landed at Bristol. She knows William Henderson, a Quaker; she being at Waterford, he sent her a message, thereupon she went to him and he asked her if she knew of any child that lord and lady Altham had? She answered him, She did know of their having a son called James, but what signified that now? he was long since transported, and I believe he is dead. To which Henderson replied that he was not dead, that he was very well, and then in London. The chief of her business in England was to see her nephews, who were sailors on board some of the king's ships, expecting to get some money from them. She did not go on account of Mr. Annesley; she never received a penny for giving her evidence. Bridget Howlet, Joan Landy, and she went in the same ship and travelled to London in a coach-and-four with Henderson, whom they met at Bristol. She paid a crown for her passage to Bristol, and a pistole for her coach hire to London, all of her own proper money. She believes Henderson paid for the rest of the company, and that he paid all the bills and expenses on the road to London. She would have gone to London if Henderson had not applied to her; he took lodgings for her and the others in the street where he lived, and she believes he paid for them; he told her that if she would live with him, he would give her as good wages as any in Ireland; accordingly she hired with him as a servant for about a year. Joan Landy's house was put into comfortable order fit to receive my lord and lady's child; the child's fine clothes were always kept at the great house at

Dunmaine, to dress him in when company came to my lord's. After she left his service she went to Kinnay, in the county of Kildare, to get wages from my lord, and there she saw my lord and the child, which was then about four years old, and it was the same child that had been under her care at Dunmaine. Joan Landy had a child of her own which was nursed by her sister when she was taken to nurse Mr. Annesley; they called the nurse's child James Landy; she heard many years ago that it was dead; it was reported that Joan Landy was married to a sailor, and that the child was his, and he was gone abroad, and afterwards it was said to be my lord's child; but my lady never heard of my lord's being the father till after she had parted from him. She believes that if my lady had known it before, she would never have admitted Joan Landy to nurse her child.

*Thomas Brooks*, who described himself as 'a piece of a surgeon,' was called in great haste to lord Altham's house twenty-eight or twenty-nine years ago; he cannot recollect particularly the time of the year, but to the best of his knowledge it was spring, as the boughs were green, and it was in the evening, and light enough for him to do his business. When he came to Dunmaine he was shown into lady Altham's room by Mrs. Shiels, of Ross, the midwife, and ordered to breath a vein or bleed my lady, which he accordingly did. He was asked how he knew she was lady Altham; says she was called my lady. Immediately after he had done his duty of bleeding her he quitted the room, and was shown into another, where he got meat and drink, and refreshed himself. He stayed in the house a good part of the night, and after he had eat and drank, Mrs. Shiels came down to



the room smiling, and said the lady was delivered of a fine boy. The messenger desired him to come to my lord's house at Dunmaine; but did not say on what account he was wanted there.

*Cross-examined*—Being asked if it was usual to bleed women in labour, says he was not told she was in labour, and that he did not see any signs of labour about her. He cannot tell whether Sutton, the surgeon, was in Ross at the time. He does not know whether he had heard of the queen's death before that time or not. He bled many people before he bled lady Altham; he is now about forty-eight or forty-nine years old, and has practised surgery about twenty years, but he knew how to bleed when he bled my lady Altham; he learned to bleed of one Graham (who lived in the Queen's County) but did not serve his time to him. Being asked if he ever bled any other woman in labour, says he bled Madam Sutton when she was in labour. He does not understand anatomy.

*Lawrence Misset* knew lord Altham when he lived at Kinnay, in the county of Kildare. When about seventeen or eighteen years old he went to school to a place called Dowding's-town, and a boy went to the same school whom the scholars called lord Altham's son. The child could not be less than six years old, and he continued about a month there. The school-master's name was Bryan Connor, and being a papist he was persecuted by a protestant schoolmaster in the neighbourhood, who wanted to banish him from those parts, and some of the neighbours, being concerned that the poor man who had lived so long among them should be banished or disturbed, requested my lord to take him under his protection.

And he, having had the honour to hunt sometimes with my lord, took the opportunity to speak to his lordship about it; to which my lord answered that he had been spoke to on Connor's behalf, and intended to send his son to school to him; which, he believed, would hinder the other schoolmaster from disturbing him. He cannot remember the year that this happened; it might be some short time before my lord came to live at Kinnay, but does not know when my lord came to live at Kinnay, or when he went away. He saw the boy at Kinnay after he had quitted Connor's school; he and Connor used on Saturdays to go a-fishing near my lord's house at Kinnay, and my lord met the deponent and Connor twice or thrice at the river a-fishing, and invited them into his house, where deponent saw the boy; and lord Altham brought him into their company and introduced him as his son; but deponent could not distinguish, at the years deponent was then of, whether it was as his lawful or unlawful son; but remembers that Lord Altham once said to the deponent, Lally, I hope you will see this boy earl of Anglesea.

*Cross-examined*—He could not recognise Mr. Annesley as the person he saw at Kinnay. The boy at school was clad in a laced hat, and was in a coat and breeches, and he takes him to have been no less than six years old. He believes he himself was about sixteen years old; he remembers to have heard of the South Sea year, but does not think he was at Connor's school then; he cannot say how near it was to the time of the rebellion of Preston, or the death of queen Anne; he does not think he was twenty years old, but remembers that he was grown up. He went to France in 1723; after leaving Connor's school he went to a

school, at a place called Nauss, to learn the mathematics, and he did not go to France till some time after leaving that school. When he was at Connor's school he must have been fifteen years old at least, because he could wade through the river.

*James Walsh* says that lady Altham, on separating from lord Altham, came to lodge at the house of Mr. Butler (the deponent's step-father) at New Ross; he saw her the day that she arrived there, and she was in very great trouble and affliction and shed abundance of tears; she complained that lord Altham had treated her so ill, that if it were not for two considerations, the cruel treatment she had met with would break her heart; and she said one of them was that she had a tender, indulgent, and the best of fathers (the duke of Buckingham); and the other, that she had a promising young son, who, she hoped in God, would be a comfort and support to her in her old days.

*Cross-examined*.—He says that lady Altham came to Ross the same day that she left Dunmaine, and it was on a Sunday; he saw her coming up to Mr. Butler's house; he had heard before that time that my lord had a child; he had been told that the child was brought to Ross to see his mother, and computes the child was then about two or three years old. Lady Altham came to Ross in a chaise or chair, and to best of the deponent's remembrance it was drawn by one horse; and he fancies her waiting-maid, Mrs. Heath, came along with her.

*James Cavanagh* was acquainted with lord Altham when he lived at Carrickduff, in the year 1721 or 1722. Lord Altham had with him a child who was deemed his only son; he always observed him very fond and

respectful of the child, as a parent should be ; he never heard my lord say who was the child's mother, but never had any doubt of his being legitimate, or ever so much as heard that he was illegitimate till lately. One day, my lord, the child, and this deponent were walking in my lord's garden at Carrickduff, and deponent, taking notice of the young gentleman, said, My lord, master is grown a fine sprightly boy ; I hope your lordship takes good care of his education, to which my lord said that he had a tutor in the house to instruct him, and declared to deponent that if that boy lived he would one day or other be earl of Anglesea.

*James Dempsey* knew lord Altham when he lived at Carrickduff in 1721 ; he was engaged as tutor to my lord's son at eight pounds a year, and instructed the child at my lord's house accordingly for about half a year. But finding from the neighbours that it would be more advantageous to teach the child abroad, on account of teaching the neighbours' children, applied to his lordship for leave to teach his son abroad, to which he agreed, and the child was attended to the public school by one of his lordship's servants. The child continued under his care for nearly two years ; the people called the child the young lord, and my lord acknowledged him to be his son ; the young gentleman was kept in decent apparel ; he had a fustian coat when at school, and a coat of scarlet cloth on holidays and state days. A year ago Mr. Annesley, Mr. M'Kercher, and other gentlemen were returning from County Wexford to Dublin, and called at Hacket's Town, in the county of Catherlough, near where deponent lives, and deponent happening to be in the next room to them in the inn where they

put up, was sent for into their company, and desired to look about the company and see if he knew any of them ; and he, presently, knew Mr. James Annesley, and pointed to him ; and said, This is James Annesley (lord Altham's son) if he be living, who was under my care for some time ; whereupon Mr. Annesley kissed the deponent, and asked him whether he had heard of his being in the kingdom, to which deponent replied that he had not.

*Cross-examined*—Says he saw Mr. Annesley at Cullen's inn, where he went to eat a stake for breakfast, and knew not of Mr. Annesley or his company being there. He believes that Mr. Owens might tell Mr. M'Kercher about the deponent, for he never knew Mr. M'Kercher before that day. Mark Owens was in the room that day ; he knew him twenty-five or twenty-six years ago, but did not see him for two years before that time, nor ever had any discourse with him about Mr. Annesley. Being asked if he went to church or mass, says that he goes to mass, but that he did not know much of religion when he tutored Mr. Annesley ; for during the six months he stayed in the house he neither went to church nor mass, but says he has a better notion of religion now (thank God). He believes lord Altham did not know of what religion he was. Being asked, if he is in holy orders now, the counsel for the lessor of the plaintiff objected to that question, and the witness refused to answer it. Asked if Mr. Annesley had his own hair or a wig when he was tutor to him ; says he had hair of his own, of a flaxen colour. Asked whether he had his own hair or a wig when he saw him at Hacket's Town ; he says that one's hair is now tossed up in such a manner that it is hard to dis-

tinguish between a person's own hair and a wig, and therefore he could not take it on himself to say.

*Charles Bryn* knew lord Altham at Carriekduff in 1721 or 1722 ; he had a child reputed to be his son, with whom he visited deponent and other neighbours. Being asked if he believed the child to be my lord's lawful son ; deponent protests, that if the best duke in England had brought a bastard to visit in his family he would have resented it, and cut his nose. Being asked to the house of one Mr. Redmonds, he met my lord Altham there, and they toasted that the child might live to be earl of Anglesea ; and my lord thanked the company, and took the health as a compliment. He believes the child was then about seven years old. My lord used to take the child to hurlings, and bought a little horse for him to ride upon ; and the child was dressed very gay.

*Nicholas Duff* knew lord Altham when he lodged at Cross-lane, Dublin, about twenty or twenty-one years ago, and he had a young gentleman with him who was called James Annesley, and he is sure he was his own son by my lord's declarations. Deponent kept a public-house in Loftus'-lane, near Cross-lane, and has heard lord Altham say, If I live to be earl of Anglesea, Jemmy will be lord Altham. For lord Altham was ever free and familiar with deponent, and used to drink with him. Jemmy Annesley went to school in Proper-lane to one Daniel Carty, and two of the deponent's sons went to the same school ; a servant in my lord's livery attended the child in going to the school and coming from it. One Miss Gregory was in my lord's family, and she along with one Betty Lister (a butcher's daughter) used to visit the deponent's house, and call for liquors.

*Cross-examined*—Being asked if he ever carried a chair ; says, What of that ? I am a gentleman now. Being asked if he opens Mr. M'Kercher's door to people ; he says, Sometimes I open it. But I have no wages ; I tend to oblige Mr. Annesley and Mr. M'Kercher. He was asked if ever he swept before Mr. M'Kercher's door ; he replied in an angry and loud tone, No. Being asked how long he had the coat now on his back ; says, ever since I bought it last spring. And deponent added, Why don't you ask me where I bought this wig ?

*Catharine O'Neife* was employed to attend my lord's son at Carrickduff, and also at Cross-lane in Dublin, for about a year in all. He was then called James Annesley, and reputed and treated as my lord's son. Mrs. Eleanor Gregory lived at Carrickduff as my lord's relation ; and when my lord came to Dublin deponent heard she was my lord's bed-companion. She remembers the child's birth-night kept at Carrickduff, and bonfires and rejoicings made on that occasion ; and several of the neighbours invited. After she had left the young gentleman in Cross-street, he came one day to see her in a very mean, poor condition, and begged of her to speak to his father in his behalf ; accordingly deponent did apply to my lord, who said, the boy had got some vicious tricks, which when he had broke himself of, and behaved better, he would take proper care of him. Upon which deponent answered, Ah ! my lord, these are only the base contrivances of Miss Gregory. When my lord first came to Dublin, lady Altham lodged in Stable-lane, and she sent for deponent to come to her ; deponent went, and my lady asked her how my lord and Miss Gregory behaved to the child ; to which deponent

answered that while he was under her care they behaved very well to him ; but that by repute they did not behave so well to him since. My lady called master Annesley her child, and said she was very desirous to see him, but that she was afraid her doing so might be a means to turn the servants out of their bread, and be a detriment to the child. Deponent asked the child why he did not go to see his mamma, my lady Altham ; to which the child answered, that he was forbid to see her, and that he durst not go, for fear his father should hear of it, and refuse ever to see him again.

*John Byrne*, brewer, knew lord Altham about nineteen years ago, when he lived in Proper-lane, and a boy called James lived then in lord Altham's house, and used to play in deponent's yard, and was reputed by the deponent and the neighbours to be lord Altham's lawful son. He is positive from his knowledge of his physiognomy that the lessor of the plaintiff is the same person now grown up to manhood, whom he saw a boy.

*Cross examined* When my lord left Proper-lane and went to Inchicore he left the boy behind him. He was then told that Miss Gregory disagreed with the boy, and that was the reason of his quitting his father's house. The boy was in very indifferent apparel, and he believes his son might give him some support, but never heard his son say he did.

*Mrs. Charity Blake* knew lady Altham when she lived at Temple-bar, when the Pretender was reported to be in Scotland ; she never heard her say she ever had a child, or was with child, but has heard so by common report.

*Edward Lutwich* was a trooper in Brigadier Napper's



regiment, and in 1717 or 1718 was quartered in Ross; he had been bred a shoemaker, and was employed by lady Altham to make a pair of damask shoes, and she gave him some white damask for the purpose. Her ladyship sent for him, and he found her with a little boy about three years old, and she told him she had sent for him to make her child two pairs of morocco leather shoes; he accordingly made him a pair of red and a pair of black leather shoes, and brought them to her ladyship's lodgings, and inquired if the young lord was within, and being told he was gone, asked to see her ladyship, which he accordingly did, and she told him that the child was gone away the day before, and at the same time expressed herself to this effect, I had better be wife to the meanest tradesman in the town, than to lord Altham, for then I should have the comfort of often seeing my child.

*Cross-examined*—He named some of the officers in Napper's regiment, and described the lady Altham's lodgings. He went there twice, and saw the child the second time, when there was a woman along with it whose name he never inquired. There was another shoemaker in Ross, particularly one Allen. His last post was in the guards, and he has now a pension from his majesty; he has also a freehold in Surrey, and voted at the last election for my lord Baltimore, and the Speaker of the House of Commons. The lessor of the plaintiff came to hear of him because after the trial of Mr. Annesley at the Old Bailey, being in company where they were talking of him, he declared on the word of a man That he believed Mr. Annesley to be the son of lady Altham, as much as deponent was the son of his mother. He is certain

that Lady Altham said 'my child,' and not 'the child.'

*Bartholomew Furlong* says that he knew lord and lady Altham about thirty years ago; and that he used to supply them with corn, butter, cheese, and bacon. Once when taking bacon to Dunmaine he saw lady Altham there, who appeared to be big with child, and he heard in the family that she was ready to lie in. Thereupon, acting on the advice of one Pierce Sutton, he got a letter from captain Tench recommending his wife as a nurse for the child, and delivered it to my lord at the gate of Dunmaine, as he was returning from hunting. My lady came out to meet my lord at the gate, and he told her of the contents of the letter; to which she replied that she would do anything to oblige captain Tench, and as soon take a nurse of his recommending as anybody's. Her ladyship then asked deponent several questions about his wife's age, and how long deponent's child was born, and likewise asked deponent what he would have a year, if Doctor Brown approved of his wife's milk; deponent then asked £10 a year, whereupon my lady said that whoever nursed her child must live in the town, that she might see it whenever she had a mind. My lord said he would give deponent £6 a year in money, two acres of ground, the milk of two cows, and build a house for him; and my lady said at the same time that she would give him 20s. more; and as deponent was going away, her ladyship gave him half a crown, and ordered deponent to send his wife to her, which he did accordingly. Doctor Brown examined his wife's milk, and objected to it because it was disturbed; at the time she was ill, which affected her milk, as he supposes. He afterwards

went to Dunmaine and saw my lady, who told deponent she was sorry that his wife had not good luck. He saw a child about a year and a half afterwards at Dunmaine standing by my lady, and her ladyship holding him by leading-strings, and deponent remembers that a woman was standing by with a basket of live chickens, and that the child cried for one of them, and deponent took a chicken and gave it to the child, who took it in his arms, and my lord kissed the child and called him Jemmy.

*Cross-examined*—The child on whose milk his wife proposed to suckle my lady's child is living alive; his name is Michael, and he is about twenty-eight or twenty-nine years old. His wife was brought to bed about two months before he applied for the nursing; either in February or March. Pierce Sutton is dead, and deponent is sorry for it. My lady was taller than my lord; she was a tall, black woman, with a good complexion. By a good complexion he meant a fair one. His wife was a brown woman; lady Altham was not of the same colour; they ought not (in one day) to be compared together; to be sure, lady Altham was fifty times beyond his wife, though his wife was more pleasing to him. Deponent knew Doctor Brown, and he is dead. The child cried in my lady's arms when the chicken ran away, and my lord said, Jemmy, Jemmy, don't cry.

*The Right Honourable Hugh Montgomery, Earl of Mount Alexander*, knew lord Altham, and a great many years ago he was in company with his lordship, captain Groves, and others, at a public-house on the Glib, the place where butchers' shambles are in Dublin, called Serjeant Kite's, where they eat oysters; and he heard lord Altham say, By God, Groves, my

wife has got a son, which will make my brother's nose swell.

The counsel for the defendant begged leave to ask my lord Mount Alexander a few questions, who says upon his word and honour, he cannot say how long ago it was, nor how long it was before lord Altham died. Being asked what time of year it was, he says it was most likely in the winter, because oysters are then in season.

*Margaret Hodges* says that in 1722 or 1723 my lady's woman and a man came to her to know whether she could board a lady with her woman and a man-servant; she came to an agreement to lodge and diet them for £60 or £70 a year, and agreed to have locks put on the doors of the rooms. The man gave the deponent a pistole for earnest, and she got the locks put on the next morning. In a few days the man came again, and told her that the doctors had advised my lady not to lodge so near the water, and that thereupon she returned the pistole she got for earnest. She told this story to a friend, who told her that she was a fool for giving back the earnest, and advised deponent to wait on her ladyship, and acquaint her how she had been served, and ask if it was with her ladyship's knowledge. She accordingly went to my lady at Mr. King's, in Charles-street, and after some conversation told her that she was her countrywoman, and that she was come over to get some money that was owing to her; whereupon her ladyship said to deponent, I wish I had never seen Ireland, and I wish you better luck in it than I have had; for my lord Altham has used me cruelly, and has aspersed my character. In the course of the conversation deponent asked her ladyship if she had any children; to which my lady answered, Yes, I have a son.

*Thomas Byrne* knew lord Altham when he lived in Proper-lane, which he left in 1724, and the deponent is positive as to this date, because it was in this year that his father put the charge of his business (which was that of a brewer) into his hands. Deponent was very well acquainted with lord Altham's son, for they were boys in the same street, and used to play together every day. Deponent went to school at one Clark's, and my lord's son to one Clarty's, in Proper-lane. When my lord left Proper-lane, his son remained in the house after him; and he came to deponent to take his leave of him, and told him that one Mr. Cavanagh, a dancing-master, was going to put him out to board. A good many months after taking leave he came to him in Proper-lane, and made great complaints of the treatment he received in Ship-street, where he had been put to board diet and lodge; he had been to Mr. Cavanagh, who had refused to receive him into his own house, and if deponent would not receive him into his care, he did not know what to do, or where to go; he durst not go to his father's house at Inchicore, because of one Miss Gregory, who was there with his father, for she could never agree with him, and had used him ill before.—An objection having been taken to the boy's statements being repeated, the witness continued that he had brought him into the house unknown to his own father, and used to take him into his own bed, or if he could not do this without his father's knowledge, he would conceal him in the hayloft, and bring him food and drink there. The boy at last grew tired of living under such restraint, and said he would go to his father at Inchicore, but the deponent does not know what became of him

but by hearsay. The school where the boy went was next door to the deponents house; when first he came there to Proper-lane, he wore a scarlet coat, and all the genteel boys in the street were his play-fellows, among them were Watty Ames, two sons of Robert Bryn, and a son of one Reily's. When Mr. Annesley came to this kingdom, Mr. R. Mathews invited the deponent to dinner, and arranged to meet him at a coffee-house. When he did so, Mr. Mathews, instead of taking him to his own house, took him to an apothecary's, where he saw Mr. M'Kercher and three other strange gentlemen in a room, and was asked whether he recognised any of them. He recognised Mr. Annesley as his former playfellow. On his way to the apothecary's he had some notion that he was going to see Mr. Annesley, for he had been told by the boy at the coffee-house the day before, that Mr. Mathews and Mr. Annesley were at the sign of the Bear the night before, and that they had sent for the deponent, but he was not at the coffee-house when the message was left there.

*Cross-examined.* Says that he is thirty-four years old next January; many of the neighbours' children went to school to Mr. Clark in the cloisters; he admits that it was a more creditable school than Carty's. He believes that Mr. Annesley came back to him in Proper-lane in the latter end of the year 1729.

*Michael Waldron*, one of the attorneys of the Court of the Exchequer, was at the school of one Dunn, in Warborough-street, and there was there a young gentleman for about seven months, who was called by the scholars young lord Altham, and particularly by Mr. Cavanagh, the dancing-master's son. The schoolmaster once made use of these words: that if

he were a duke's son, let alone a lord's son, he would correct him.

*Cross-examined*—He says he went voluntarily to Mr. Annesley's lodgings in College Green, and introduced himself, in order to do him all the justice in his power.

*Barnaby Dunn* kept a school in Warborough alley, in Warborough-street, and one Dennis Cavanagh (a dancing-master) introduced master James Annesley to him as lord Altham's son, and put him to deponent's school, using these words, As you regard me, take care of this young gentleman ; he is lord Altham's son.

*Cross-examined*—Says that the boy lived in Ship-street when he went to his school ; for on his absenting himself, the deponent found him there, and told him that if he was even the lord Anglesea, and under the deponent's care, he would punish him for absenting from his school. Sometimes a servant clad with a blue cloth came along with the boy to the school, but not always.

*Thomas Byrne, recalled*, says that the boy did not go to school while he stayed with him in Proper-lane, that he was about the door, and sometimes lay concealed in the house ; he believes he lodged with the deponent about Christmas time.

*Patrick Plunket* knew lord Altham in 1723, when he lived in Proper-lane next door to the deponent's father ; the deponent used often to go a-hunting with him, when he kept a pack of hounds, and by that means became intimately acquainted with him. He saw a child at lord Altham's house, whose name was James Annesley, and who was treated by everybody as lord Altham's son. Miss Gregory used often to com-

plain to my lord of the child, and deponent twice or thrice interceded and got a pardon for him. The fault the boy was charged with, was either telling lies, or being missing from school. Deponent understood that Miss Gregory hated the boy; she was mistress of the house, and whatever she commanded was done. One of the times when he interceded for the child, my lord and lady were in such a passion, that they were going to beat the child. Deponent never heard a suspicion that the boy was not lord Altham's son, until admiral Vernon had sent Mr. Annesley from the fleet to London. Lady Anglesea sent for the deponent, about last May was a twelvemonth, and asked deponent if he knew lord Altham, or a bastard son of his; to which deponent answered, that he knew a pretty little boy, that was in the house with lord Altham, who was reputed to be his son, but not a bastard; lady Anglesea replied, He is a bastard son of my unfortunate lord, and added that it was admiral Vernon sent him home to London. He afterwards picked out Mr. Annesley from among several gentlemen, and had no doubt that it was he.

*Amos Bush*, when he was in the college of Dublin, knew a little boy about ten or eleven years old, who got his subsistence at the college by running of errands; he was called James Annesley, and deponent was told he gave himself out to be lord Annesley's son; he took him into his service, and maintained and clothed him, and paid for his lodging, and intended to take him into the country; but on the boy's assuring him he was lord and lady Altham's son, and often telling him so, and adhering very particularly to the same story, deponent wrote to the country, to his grandfather, acquainting him that



he had taken a little boy to be his servant who said he was lord and lady Altham's son ; whereupon his grandfather, in answer to his said letter, wrote that no such person was a fit servant for the deponent, and directed deponent to discharge him ; whereupon deponent accordingly discharged him. He went last night to Mr. Annesley's lodging, and saw him among several other gentlemen, and knew him at first sight, and said to him, Sir, I recollect your face ; and Mr. Annesley said, I recollect yours, and will ever remember it ; and deponent says he never saw him since he was in the college till last night.

*Cross-examined*—Says that some thought by his indigent circumstances that the boy was not lord Altham's son, but others believed he was. He remembers that he once spoke to him thus, You little rogue, you often say you are lord Altham's son ; now tell me the truth, are you so, or are you not ? To which the boy answered, Indeed and indeed I am my lord and lady Altham's son ; and always agreed in the same story. Being asked whether he would have taken him as a servant if he had believed him to be lord Altham's son, he says he would have chose, in his way of thinking, to take him as a servant, to preserve him from penury, though deponent had really known him to be lord Altham, my lord's son. Being asked if he did not know it to be an improper thing for a gentleman to take a lord's son for a servant ; he says, if he had understood ceremony as well then as he does now, perhaps he would have thought it improper to take him as a servant. When deponent first knew him, he had neither shoes nor stockings ; he was a little scull that used to go of errands. He fancies that he first went to the college

about 1722 or 1723; he believes he was in the college seven years.

*Dominick Farrell* was well acquainted with lord Altham's son when he was in disgrace with his father, for he used to come to visit him, and he often relieved and supported him, and recommended him afterwards to one Purcell, a butcher, because deponent's wife grudged the child's being in the house and kept at deponent's expense, who was a sufferer by his father, £56. Finding the child was abandoned and neglected, deponent went to my lord at Inchicore, and applied to him, and told him the scandalous and cruel way his son was in, and begged his lordship not to let the poor child continue as a vagabond about the streets. My lord said he was in low circumstances, and could not pay for his board, nor could he take him into his own house, because of Miss Gregory, for he should have no peace if he offered to do it; but my lord desired deponent to support him, and he would not only pay deponent the money he owed him, but thankfully repay deponent what deponent should supply his son with, whenever it was in his power. Deponent went to Dunmaine when the child was about two years old, and had him in his arms; he took him out of my lady's arms, who was hugging and kissing him. He afterwards saw the child at Kinnay, and is positive it was the same child; he saw him too at lord Altham's house at St. Stephen's Green, and when he went to school at Carty's. After his discourse with my lord, he kept the boy for about a month or two, but his wife being not well pleased with this, deponent grew a little cool to the boy, who thereupon went away from his house. Deponent met him, and gave him a little money, and about three weeks after that,

deponent saw him in Smithfield, all in rags and tatters, riding a horse; and at that time seeing one Mr. Purcell, a butcher, with whom he was very well acquainted, and whom he knew to be a very humane, charitable man, and in good circumstances, and to have but one child of his own, he took that opportunity of making the child known to him. Having directed Mr. Purcell to look upon the boy as he was riding the horse, he said, Could you believe that that boy is the only son and heir of a peer? who one day or other will probably have a large estate? To which Purcell answered, Sir, that's impossible. And thereupon deponent replied, I affirm to you he is; and if you will take him home, Mr. Purcell, and succour him, he will be no improper companion for your son, and may live, by God's providence, to be a support to you, and to your family. Then Purcell asked the boy a few questions while the deponent stood aloof, and having beckoned deponent to come to him, deponent observing the boy to be somewhat melancholy, he said to him, Jemmy, why don't you speak to me? what have I done to you? Purcell then took the boy to his own house, and his wife being informed who he was, got some warm water, washed and combed him, and put him on a clean shirt of her son's, and told him that while she had bread he should not want. Lord Altham was at that time in low circumstances, and owed deponent's brother-in-law £250; his not paying did not arise from want of principle, but ability. Upon hearing of Mr. Annesley, he had the curiosity to see him, and went to his lodgings, and immediately knew him to be the same person whom he knew when a child.

*John Purcell*, a butcher, knew a boy called James

Annesley; and repeated the story already told by Farrell as to how the boy came into his care. When the boy lived in his house most people used to call him my lord. Some time after he came he took the smallpox, and all proper care was taken of him in deponent's house. After he was recovered of the smallpox the defendant, who was then called Richard Annesley, came to deponent's house, and asked if one Purcell did not live there; he had a gun in his hand, and sat down, and having called for a pot of beer, asked deponent if he had a boy in his house called James Annesley? The child was sitting at the fire-side, and immediately saw Mr. Annesley, though he could not see the boy, by reason of the situation wherein he sat. The child trembled and cried, and was greatly affrighted, saying, That is my Uncle Dick. When the child was shown to the defendant, he said, So, Jemmy, how do you do? The child made his bow, and replied, Thank God, very well. The defendant then said, Don't you know me? Yes, said the child, you are my Uncle Annesley. Thereupon the defendant told deponent that the child was the son of lord Altham, who lived at Inchicore; to which he replied, I wish, sir, you would speak to his father to do something for him. He did not understand the defendant to mean that the child was a bastard. The child called the defendant uncle, and begged of him to speak to his father to send deponent something that was handsome for his kindness to him. Thereupon deponent told Mr. Richard Annesley he desired no gratuity, but wished the child's father would take him into his own care. The child, to the best of his memory, told his uncle he had fallen into the hands of good people. Some time afterwards the child was

told of the death of his father, and that he was to be buried at Christ's Church; and the child went there and saw the funeral and came home all in tears. Lord Altham died in November, 1727. In about three weeks after my lord's death, Mr. Richard Annesley, who was then called lord Altham, came into the market a second time, and sent a man to deponent's house to desire the child might come to Jones's house in the market; deponent was told of this by his wife, but she was afraid it was some trick of his uncle's to use him ill, and she did not care to let the child go to Jones's without deponent. Deponent thereupon took a cudgel in one hand and the child in the other, and went to Jones's house, where he saw the present earl of Anglesea with a constable, and two or three other odd-looking fellows attending about the door. Deponent took off his hat and saluted my lord, which he did not think proper to return, but as soon as he saw the child in deponent's hands he called to the fellow that stood behind deponent's back, and said to him, Take up that thieving son of a whore (meaning the child), and carry him to the place I bid you. Deponent asked him whom he meant by the thieving son of a whore. Damn you, said my lord, I don't speak to you, but to that thieving son of a bitch; I'll send you both to the d—l; upon which deponent said, My lord, he is no thief, you shall not take him from me, and whoever offers to take him from me I'll knock out his brains. Deponent then took the child, who was trembling with fear, and put him close between his legs. This was in December, about six or seven weeks after he sent for the child to Jones's. He asked the uncle, by what authority he would do what

he threatened? To which Mr. Annesley made answer, that he could not make his appearance at the Castle, or anywhere, but that he was insulted on that thieving son of a whore's account. Thereupon deponent said that he was surprised that a gentleman who made the appearance that the defendant did should show so much malice to destroy a poor creature that was no expense to him either for clothes or maintenance, though it would better become him, who was the child's uncle, to provide for him, than to suffer the deponent, who was a stranger to him, to do it. The defendant expressed a great deal of anger at his not being able to compass his ends; and after some high words had passed between them, deponent, seeing the constable go off, went away with the child in his hand, and carried him home safe to the deponent's wife, his mammy, as he called her. Some time after he saw a constable lurking about his house to carry away the child if he could, as he believes. The child continued with him till February, and then went away without deponent's knowledge; he went to one Mr. Tigh's, at the Haymarket, as he told deponent some time after; and the reason he gave deponent for going away was, That he saw so many people coming about the house after him, that he was afraid of being taken away by some of them. He pitched on Mr. Annesley among several the first time he came to this kingdom without the least hint being given to him.

*Cross-examined*—It was in 1726 or 1727 that the deponent saw the boy, and that lord Altham then lived at Inchicore, and died in the same year. The boy continued with him eleven months; he remembers his coming from lord Altham's burial; he

ran from deponent's house to Christ Church to see it. Deponent had once determined to have gone to Inchicore to see my lord about the boy, only that he was advised that my lord was a passionate man, and would not value the shooting him through the head, and that it would be of no service to the child, because of the woman that my lord kept in the house. The defendant was called captain Annesley when he came to the deponent's house, and the child called him uncle. Not being skilled in law affairs, he could not tell why the boy did not succeed my lord Altham, his father; but says the boy went to Mr. Tigh's, a gentleman more capable of such sort of business than deponent. He did not tell Mr. Tigh that the boy was lord Altham's son; he was indifferent to the boy because he went away from deponent without his knowledge. He heard that captain Annesley (the present defendant) became lord Altham on the death of the late lord, but deponent did not care to interfere in that matter, so long as might overcame right; and as the boy went away from deponent without his knowledge, deponent did not think it incumbent upon him to meddle in it. He knows he went to Mr. Tigh's because he saw him at Mr. Tigh's door, and in a livery, which gave deponent great concern. Deponent suspected that the defendant intended to do the boy a harm when he went to Jones's; but he did not care to go to law about it, though he took care to keep the boy within doors after the defendant made this attempt. The defendant was in the kitchen when deponent found him at Jones's, and the constable stood in the entry behind deponent's back, and two or three without side of the door; the boy said to the deponent, Dear sir,

don't let them take me away, that's Uncle Dick, they will destroy me ; upon which deponent told him, he would lose his life before he should be taken from him, and some people hearing the noise came and asked deponent if he wanted any assistance. Being asked to name some of these people, he named Mr. Bignell, who he said was dead. The constable went away ; he can't tell who the constable or the other ruffians were, never having seen them before. The boy remained with him about two months after that.

*Shelcross Ash*, one of the attorneys of the Court of Common Pleas, was in the company of the present lord Anglesea, the now defendant, when some of the company having mentioned that there was a boy at lord Altham's burial who made a great noise, and cried, and called himself lord Altham's son ; the defendant made answer, and swore that he was an impostor, and a vagabond, or words to that effect, and ought to be transported. Soon after the late lord Altham's death, deponent was in the company of the present defendant, then lord Altham (deponent being concerned in his affairs), and either one Cavanagh (a dancing-master) or one Wilkinson (persons who used to attend his lordship) having been sent by him to Mr. Hawkins, king-at-arms, to desire him to enrol my lord as baron of Altham in the place of his brother, the late lord Altham, came back and gave his lordship an account, in the presence of the deponent, that Mr. Hawkins said that he would not enrol him, for that there was some reason to believe that the late lord Altham had left a son ; for that a boy had made a great noise at his funeral in Christ Church, crying, and telling everybody aloud that he was the son of the late lord Altham. My lord was



very angry at hearing what Mr. Hawkins said ; and declared that the boy was a vagabond and impostor. I said that if he was a vagabond there was a method to get rid of him which was to get him indentured at the Tholsel and transported. Deponent believes my lord said the boy was a bastard, though he gave no other reason to induce the deponent or the rest of the company to believe him such, than his lordship's speaking in an angry manner. Deponent thereupon said that Mr. Hawkins's refusing to enrol his lordship might not perhaps be on the boy's account, but because he wanted his honorary fees ; whereupon my lord said that if that was all he would satisfy him. He never heard my lord say that the boy was transported ; but some time after the boy was gone, upon some of the company talking of him, the defendant said that he was gone ; and he said it in an easy manner, without any heat.

*Cross-examined*—Says that he never heard that the late lord Altham had a son, he never heard of the boy till after the death of the late lord Altham ; he dined with him, and never heard him say that he had a son. He died intestate, and the defendant took out administration to him. The defendant did not consult the deponent about the boy's transportation.

*Mark Byrn* says that about sixteen years ago, one Donnelly, a constable, met deponent (who was at that time likewise a constable) and told him he had a good job, for which he was to get a guinea ; and deponent should have a share of it. Deponent accordingly went along with Donnelly to Jones's house in Ormond Market ; and the present earl of Anglesea was there, and there was a small boy there, which my lord said was his brother's son. My lord

charged the boy with stealing a silver spoon, and that he was a thief, and desired the deponent, Donnelly, and others, who were then with my lord, to take him away to St. George's Quay. Accordingly they took him away and carried him towards Essex-bridge; and there a coach was got, into which the said Donnelly, the boy, and deponent went. The coach was ordered to drive down to George's quay, and my lord was there as soon as the coach. There was a boat waiting at the slip, and the boy was put into it by Donnelly, and lord Anglesea went into the boat down the river, and deponent returned home. Next day Donnelly came to deponent and gave him a shilling; whereupon deponent demanded half a guinea, as the part which Donnelly had promised him; but never got it. There was a mob followed him when they carried the child away; the boy cried very much, which occasioned the mob. The boy told them, he was afraid his uncle was going to kill or transport him. There was nothing done to prevent the transportation. He and Donnelly had no staves as constables; but they were publicly known to be such; they had no warrant as he saw.

*Cross-examined*—He does not know what time of day it was when he came to Jones's, whether morning or afternoon, but it was daylight. He believes it was in the spring. He did not know at that time what was going to be done to the boy, but apprehended nothing right was going to be done. When the boy was got into the boat deponent was surprised, and began to believe that something out of the way was intended, and that they were going to send him oversea. He did not inquire for any warrant for what he did; he believed it to be unlawful, though he did not acquaint

any of his companions that he thought so. He had seen lord Altham (the present defendant) several times before that time. Donnelly is dead ; it was he that ordered the coach to drive to George's quay. Donnelly and Reilly held the boy. Deponent stayed till they went off, and saw them row the boat beyond the walls.

*James Reilly* lives now in London, and has a house of his own, but he lived with lord Anglesea as a servant for about eleven months about fifteen or sixteen years ago. The late lord Altham had been dead about three months when the deponent came into the defendant's service. About a month after he came to live with my lord, he was (with some constables, whose names were Bryan Donnelly, John Donnelly, Mark Byrn, and Patrick Reilly) employed by my lord to look for one James Annesley, and they several times searched for him in vain. At last one day he was sent for by my lord to George's quay ; and when deponent came there my lord whispered him to go and borrow a guinea for him. Deponent accordingly went to Mrs. Kelly's at the Butcher's Arms, near Inchicore, and got the guinea, and returned to my lord at George's quay, and gave him the guinea ; and deponent saw my lord give the guinea into John Donnelly's hands, and then John Donnelly went away. There was a boat at the slip, and Bryan Donnelly and Mark Byrn brought the boy, who was immediately put into the boat, and my lord, Bryan Donnelly, John Donnelly, the boy, and deponent went into the boat and rowed to a ship that lay down the river as far as Ring's end. When they came there the boy was put on board the ship, which was to sail to one of his majesty's plantations, as he had

been informed. My lord went on board the ship with the boy, and nobody else, and the boy cried bitterly ; and my lord stayed on board a few minutes and then returned to the boat, and they rowed back to George's quay. He was acquainted with the boy ever since he was about six years old ; he knew him in lord Altham's house in Stephen's Green, and in Proper-lane, and believes him to be my lord and lady's child. He heard the defendant say, when he was affronted for taking away the child's birth-right, that he would take a course with him. He used to hear people curse my lord several times on the boy's account, both before and after the boy was gone.

*Cross-examined*—Says it was the afternoon when he got to George's quay, and it was in the spring of the year. He knew Mark Byrn at the time ; he met him last Saturday and Monday in the Backhouse, where the witnesses for Mr. Annesley are entertained, but does not remember to have had any conversation with him about Mr. Annesley. He was at the quay, but did not go with them to the ship. It was about two o'clock when he left the quay, and went to the Butcher's Arms, and about three o'clock when he returned. In about two or three minutes after Donnelly got the guinea, the boy was brought and put into the boat. He knew that the boy was to be transported, because he had heard it talked of several times before it was done ; he knew it was not a lawful thing to transport the boy without any proper authority, but he thought himself obliged to do what his master ordered him, though it was an unlawful act. When my lord sent him in search of the boy, he directed him not to take him in Ormond Market, for fear Purcell the butcher should alarm the market

boys, and rescue Mr. Annesley from him ; but to go in search of him to Smithfield, College Green, and on Sundays to the Long Meadows. The boy, the day he was carried on board, had on the livery deponent saw him wear whilst he lived with Mr. Tigh. My lord turned deponent out of the house about two o'clock in the morning ; my lord coming home one night to Inchicore from Dublin, deponent had wrapped himself up in an old blanket, and seated himself on a chair in the inside of the gate, that he might wake the easier when my lord came home, and so as not to make his lordship wait ; my lord having words with the coachman who drove him home, about his fare, deponent opened the gate, to hinder him from running the coachman through the body, as he threatened ; my lord coming in and seeing the chair and the blanket at the door, charged the deponent with an intent to rob him, to which the deponent replied, That if he had any such intent, he should hardly have thought of carrying away an old blanket and a chair not worth a groat ; that thereupon his lordship flew into a great rage, stripped deponent of his coat, waistcoat, and breeches, and in that condition turned him out of doors, though it was a mizzly night, threatening, with many oaths and curses, to send deponent to Kilmainham Gaol, if he did not get away from his door that instant ; deponent having got some clothes at Dublin, went next day to my lady and desired her to intercede with my lord for his wages, and three guineas he had laid out for my lord ; my lady promised to intercede for deponent and gave him 7s. to buy shoes and stockings ; my lord hearing this of this, issued out his own warrant and got deponent taken up by a constable at Palmerston for the 7s.

under pretence that deponent had defrauded my lady of the money under false colours; rather than lie in gaol, deponent paid the 7s., and thereupon deponent was discharged. He was never paid wages by my lord; and he was so afraid of his lordship that one day when deponent lived as a servant with lord Mountjoy, seeing my lord come in there, deponent hid himself there for fear of him.

*George Babe*, an officer of his majesty's customs, and clerk of the ship-entries of the port of Dublin inwards and outwards, produced an entry-book containing an entry outwards on the 18th of April 1728, of the *James* of Dublin, burthen 100 ton, Thomas Henry, master James Stephenson and others, owners. Such an entry is made on affidavits, and the ship sails after it is made.

*Andrew Cromie* was a clerk to Mr. Stephenson, a merchant, who is dead. Mr. Stephenson traded very much to the West Indies, where he used to send beef and butter, and other provisions, but his chief business was to hire servants and to send them to Philadelphia. There used advertisements to be published giving notice of the time a ship was to sail for Philadelphia, whereupon servants came to Mr. Stephenson's house, and when an agreement had been made, there was an entry made in his books; and when the ship was ready to sail, the persons were brought down to the Tholsel of the city of Dublin, and there indentured before the lord mayor. Deponent produced a book containing an account of the men and women servants on board the *James*, which went over the bar of Dublin on the 30th of April 1728, in which is the name of James Annesley, written in the hand of one Skellern, now dead. He did not know of any servants going but what were indentured. The usual method was this,

the master made out a list of all the persons on board his ship, and the merchant's clerk went on board, and called over the names in the master's list, and before the ship sailed every person walked by, and answered to his name, so that they saw that every person in the list was actually on board; and this list being entered in the owner's books, was the charge upon the master. Asked if the persons on board at the time the list is so called over are asked any questions whether indentured or not; says they are not asked any question at all.

*Cross-examined*—Says he cannot tell whether the servants on board the *James* were put on board her at the quay. The servants are brought before the lord mayor, who examines them (if under age) and inquires who they are, and what are their reasons for going, and is very cautious whom he indents. The town-clerk takes an entry in the Tholsel books of such as are indentured before the lord mayor. He remembers some being indentured before Mr. Hawkins when he was a justice of the peace. The mate or master of the ship may perhaps set down in his list persons as servants who are not so. He never knew of any one taken by force on board of any ship. Every person on board when the list is taken would be set down on the list as a servant, even if he was to declare himself unwilling to go, or whether the clerk found him indentured or not, and the clerk would not on that account stop the ship. The clerk generally indentured to the master before he called the list of servants aboard, but the list is as often called over without the indenture as with it. The master of the *James* might have servants on board without the knowledge of Mr. Stephenson, and

some of the persons entered on Mr. Stephenson's list might not have been indentured. No return was ever made by Thomas Henry the master to Mr. Stephenson of that voyage. When he sailed away at that time he had a good character, but afterwards turned out to be a very sad man, having wronged Mr. Stephenson of £4000.

*Henry Gun*, the town-clerk, produced a list of persons indentured before the lord mayor beginning May 1699, and the name of James Annesley is not found among the names entered to Thomas Henry between 21st March 1727 and 26th March 1728. But it appears that one James Hennesley appears to have been indentured the 26th March 1728. There are, however, twenty persons named in the Tholsel books more than in Stephenson's book.

*Richard Tigh* knew James Annesley when he was a boy. He came to the deponent in a very poor condition, from one Purcell. Some time after Christmas 1727, deponent's son brought him into the house unknown to the deponent, out of charity, he being turned out of doors by lord Altham, who was reputed to be his father. The boy appeared to be about thirteen or fourteen years old, and continued with the deponent till he was transported. There was a yellow livery waistcoat in the house, which was formerly worn by the deponent's son's servant, and finding that it fitted the boy, deponent's son put it on him. It was not long after deponent missed him from his house, and heard he was gone on ship-board, and one Peter Murphy told deponent the boy was transported. (Here he was interrupted by lord Anglesea's counsel, who observed that as he was bred to the law he must know he ought to give nothing in evidence from hearsay.) He does not



know why the boy withdrew from his family, having no occasion given him to be uneasy in it. The boy was with him so short a time that he took but little notice of him or his affairs; if he had stayed with him some time he does not know but he would have taken some steps to assert his right.

*Cross-examined*—He says that he did believe the boy to be lord Altham's son, and yet he did clothe him with that old waistcoat, and would have done it though he was sure that the boy was my lord's son; for he came to deponent in a very poor, mean way from Purcell's, just out of the smallpox, having the red marks of it in his face. Deponent's own son is dead. Being asked what he conjectured to have been the occasion of the boy's leaving his house, says he conjectures him to have been spirited away, and still believes he was kidnapped. Peter Murphy, the boy who lived with him after Jemmy went away, told him he had been on board of a ship, and had seen Jemmy Annesley lamenting and crying, that his uncle had stole him away, and was going to transport him. He did not afterwards make any inquiry about the boy, or take any steps in his favour, upon hearing that he was taken away by force, the ship being gone immediately after Murphy had told him of it; and as to the boy's right, the prosecution of it would have been attended with trouble and expense, and there was so little likelihood of deponent's ever seeing the boy again, that deponent thought it most prudent not to trouble himself about it. Being asked why he did not inform Arthur, late earl of Anglesea, of this matter, since deponent could not but know that the earl had such a hatred for the present one, that he would have been glad to have espoused the right of

the young man in prejudice of his uncle ; says he had no acquaintance with earl Arthur, nor did he know how matters stood between the said late and the present earl.

*John Broders* had seen Mr. Annesley in America fourteen or fifteen years ago. He was riding with his brother there, and being cold they had entered a house to warm themselves ; and a boy had come in with a gun and a dead squirrel ; he asked him what countryman he was, and the boy said he was an Irishman, and came from the county of Wexford, that he was born at Dunmaine, that his name was James Annesley, and that he was lord Altham's son. He told them that he was servant to the master of the house, and had been kidnapped by his uncle. He cannot swear to Mr. Annesley's face, but from what he told deponent of the conversation they had in America, he believes him to be the person he saw and talked to there.

*Mr. John Giffard* was called and sworn, and was asked whether he knew of any prosecution carried on against the plaintiff by the defendant for murder.<sup>1</sup> (This was the case that had been tried at the Old Bailey mentioned above ; see p. 5.)

*The Rev. Mr. Abell Buller* was minister of Tyntern and Owenduff, with which Dunmaine was united. There was no book kept therein for registering births, marriages, or christenings.

*Joshua Barton* knew the late lord Altham very well. One night he was in his company till four

<sup>1</sup> This evidence was objected to on the ground that what had taken place in a previous case could not be evidence in this one, and after some argument the question was postponed till the next day.

o'clock in the morning, and he remembers he asked my lord to this purpose; My lord, would you be angry with me if I asked your lordship a question; and his lordship said he would not take it amiss. Whereupon deponent asked his lordship, Pray, my lord, is the little boy that runs about the streets of Dublin in such a poor condition, your lawful son or a bastard? My lord answered, That James Annesley, that poor boy, is my lawful son by my wife; and added that he could not keep the boy at home because of the woman he kept. My lord had at that time a pension from the crown, and was needy enough. 'Tis true, he kept a pack of hounds, but one hound was ready to eat another.

*Cross-examined*—Being asked if he ever put my lord in mind of the boy afterwards, says he did not think it so right, as it was more properly his lordship's own business. It was four o'clock when they parted; deponent was not drunk, for he remembers his coming home well enough, and particularly through what field he came; and my lord was so sober as to wait upon deponent to the door when he came away.

The next day the question of the admissibility of Mr. Giffard's evidence being received was resumed, the broad question being now raised whether he could give evidence of something which lord Anglesea had said to him about the charge of murder against the plaintiff at a time when he was lord Anglesea's attorney for some purposes, but had not been retained by him to act in the murder case. After a prolonged argument it was decided that the evidence was admissible, on the ground that the communication had been made to Giffard as a friend and not in his professional capacity, and he was called and sworn accordingly.

*John Giffard* knew the present earl of Anglesea and Mr. Annesley. Some time between the 7th of December 1741 and May 1742, my lord Anglesea had an appeal to the House of Lords in England between Charles Annesley and himself; and the deponent having charge of that suit and several others, he was very uneasy at it. Lord Anglesea said he would be very glad to send to the present plaintiff, and if he would give him £2000 or £3000 a year, he would surrender up to him the titles of Anglesea and Altham, and the estate, and go over to France and live there; and then he should be much easier and happier than to be tormented with these people that were suing of him, for that he would rather his brother's son should have it than any other person. For if Jemmy had the estate on those terms he should live much happier and easier in France than he was here, as he was tormented by law; for it was his right, and he would surrender it to him (for he did not value the title), rather than Frank and Charles Annesley, and those that were striving to take it from him should have it. And he said he would send for a gentleman to teach him the French tongue, to qualify him to live in that kingdom; and accordingly he sent for one Mr. Stephen Hayes, an officer in the French service, and my lord had him in the house a considerable time on purpose to converse with him in French. The conversation was about March 1741, when he had the appeal in England—I believe it was both before and after; the appeal was determined the 10th of March, and he continued in that resolution till May 1742.

And pray, what altered that resolution then?—Why, on the 1st of May, Mr. Annesley had shot a man at Staines, upon which my lord sent for me and

ordered me to go to Staines, and to inquire into the affair, and to collect the evidence, and carry on the prosecution, and to follow the directions of Mr. Gordon, with the assistance of one Mr. Jans, who was a surgeon. My lord in some small time after, perhaps three or four days, told me, That they had consulted together, and they advised him not to be seen to converse with me, for that it was not proper for him to appear in the prosecution, for fear of its hurting him in the cause that was coming on between him and the plaintiff; and that he did not care if it cost him £10,000 if he could get the plaintiff hanged; for then he should be easy in his title and estate. He was determined, as he was advised, not to appear in it himself, but that I should apply from time to time to Mr. Jans, and he should supply me, for he had ordered him to provide money.

What was Mr. Jans to my lord Anglesea?—His companion, and manager, and agent, and everything for him.

*Cross-examined*—He had the discourse mentioned with the defendant before the 10th of March 1741, and at sundry times between the 7th of December 1741 and May 1742. He came to be employed as agent under Garden and Gordon to carry on the prosecution, because he had been a coroner in the county of Devon for some years, and was thought a proper person because of that. He attended the coroner's inquest, and did inform himself of it, and collected evidences, and drew the brief. The indictment was found on the inquest of the coroner, who took the examinations of the witnesses short, as memorandums. The bill was found upon the evidence of the son of the deceased, and others, *vivâ voce*,

before the Grand Jury. Most of the witnesses examined before the coroner were examined before the Court on the trial, and a great many more. The case upon the trial differed vastly from that which appeared upon the examinations before the coroner. The finding of the coroner's jury was wilful murder. The case against Mr. Annesley was stronger upon the coroner's inquest than it was upon the trial, because the main evidence was taken off on the trial by one of the witnesses for the prosecution being discredited by one of the witnesses produced by Mr. Annesley. The discredited witness was one Egglestone, who was brought to deponent by one Williams who kept the White-Horse tavern in Piccadilly, when he varied from the evidence he had formerly given. The trial was on the 14th of July 1742. When lord Anglesea said that he did not care if it cost him £10,000 to get the plaintiff hanged, deponent did not advise him not to carry it on; he did not presume to undertake to advise him. Deponent could not say that he either approved or disapproved of his expressions and design together. He did afterwards go on as effectually with the prosecution as he could; he advised lord Anglesea not to appear upon the trial. The defendant made the declaration to him, he believes, on the day after the inquest. If Mr. Annesley were hanged it certainly would disappoint that project of disappointing the Annesleys; but then it would put a greater estate into lord Anglesea's pocket.

Was not the intention of the prosecution to disappoint the Annesleys?—No, the intention was to put this man out of the way, that he might enjoy the estate easy and quiet.

When my lord Anglesea said that he would not

care if it cost him £10,000 so he could get the plaintiff hanged, did you apprehend from thence that he would be willing to go to that expense in the prosecution?—I did.

Did you suppose from thence that he would dispose of that £10,000 in any shape to bring about the death of the plaintiff?—I did.

Did you not apprehend that to be a most wicked crime?—I did.

If so, how could you, who set yourself out as a man of business, engage in that project, without making any objection to it?—I may as well ask you how you came to be engaged for the defendant in this suit.

Did you not apprehend it to be a bad purpose to lay out money to compass the death of another man?—I do not know but I did. I do believe it, sir; but I was not to undertake that bad purpose. If there was any dirty work, I was not concerned in it.

If you believe this, I ask you, how came you to engage in this prosecution without objection?—I make a distinction between carrying on a prosecution, and compassing the death of a man.

How came you to make that distinction?—I may as well ask how the counsel came to plead the cause.

Did you ever mention to any of your counsel that my lord made that declaration?—I did not.

If you had told any of them that my lord made that declaration, would they have appeared for you?—I can't tell whether they would or not.

Do you believe any honest man would?—Yes, I believe they would, or else I would not have carried it on, sir. And I do assure you it is the only cause I was ever concerned in at the Old Bailey in my life, and shall be the last.

He was employed by the churchwarden of Staines (where the alleged murder took place) to prosecute. He would not have been concerned upon any account whatsoever, had he not had the sanction of the coroner's inquest for wilful murder, which he thought a justification of the prosecution. It was by the advice of Garden and Gordon that he received instructions from the churchwarden to prosecute; he was privy to the course adopted, and it was advised in order that the defendant might not appear in the prosecution. He knew at the time of the trial that it was reported that Mr. Annesley intended to sue for the title and estates of lord Anglesea, and the trial was in order to prevent it. The prosecution cost £800, and the total remaining due to him was £300; if Mr. Annesley won the present suit he would lose every shilling of it. He knew Thomas Smith. He had told him that my lord had taken a wrong step, for his bill of costs would never have come to light, had he not been obliged to sue for his right; his lordship had filed a bill in the Exchequer in England against him, and he was obliged in his justification to annex in a schedule his bill of costs. He looked on Mr. Jans as his client; the discourse his lordship had with him, he had as his friend; on the 4th and 5th of May (the day of and the day after the inquest) he looked upon his lordship as his client, he could not tell in what light his lordship looked on him. When his lordship talked about giving up things to Jemmy, he did not talk as if he were in a passion; he spoke both from a conscientious scruple and from a desire for ease. The reason of it was, he was extremely angry with the Annesleys, because they pulled away money too fast from him. He had heard lord



Anglesea say that the pretender, as he called him, was a bastard. He had heard him say he was his own bastard. He had heard him say he was his brother's bastard. He had heard him say that he got the wench with child, and made her lay it on his brother because he was better able to maintain it than himself. He had heard him say that he was transported for stealing a silver spoon. Rolph was present when he said this; and said that he was in bed with the wench, along with my lord.

*The Attorney-General* then opened the case for the defendant, briefly foreshadowing the evidence he was about to call, and dwelling particularly on the fact that the birth of a son to lord Altham would be a matter of great interest to the rest of the family; and that according to Wall's evidence it would be to lord Altham's interest to have an heir in order that he might raise money on the reversion of the Anglesea estates.

*Nicholas Loftus* had lived within eight miles of Dunmaine for the last thirty years; he never heard of lady Altham having a child. He knew alderman Barnes very well; and being asked whether he was not impaired in his memory and understanding, said he was much impaired in his health; but was not allowed to give further evidence on this point.

*Thomas Palliser* knew lord and lady Altham very well, and lived at Great Island, within three miles of Dunmaine. There was great intimacy between my lord's and his family. They generally visited one another once a fortnight. He never heard of my lady having a child; he must have heard of it if it had happened. He never heard it mentioned. He knew Joan Laffan; she had been his servant; she was turned away for misconduct; she was an in-

famous woman ; he would not trust her for the value of a potato.

*Cross-examined*—He admitted that in 1713 and 1714 he was building in the barony of Forth, which is fourteen miles from Dunmaine ; he was backwards and forwards between Great Island and the barony of Forth all the time. He never stayed at the barony more than six weeks at a time unless he had the gout ; but he had the gout pretty often. He knew Dennis Redmonds, who was once his servant ; he asked him what evidence he had to give in the case, when Redmonds told him that he had been sent to fetch a midwife from Ross to Dunmaine.

*William Wall* was employed as an attorney by the late lord Altham from the year 1716 to the time of his death. He knew my lord and my lady when they lodged at Vice's soon after my lady came over to this kingdom, and afterwards they went to live at Dunmaine, where the deponent visited them sometimes. He does not believe that lord Altham ever had a child, because he was employed by him in 1725 to draw a case on his lordship's title, under the wills and codicils of James, earl of Anglesea, which he carried to counsel, and they gave their opinion that if my lord had a son, and of age, and such a son would join with my lord in levying a fine and suffering a recovery, then his lordship might dock the entail, and sell the reversions of such part of the Anglesea estate as he should think fit ; and thereupon my lord told the deponent he had no legitimate son, but had one that was illegitimate ; and deponent has heard my lord wish that he had a lawful son, because then he could raise money by the sale of his estate, his lordship being commonly in a very needy condition. He remembers to have seen a boy in the street at

New Ross, in a poor, mean habit, like some of the common boys, who as somebody told deponent was a bastard son of lord Altham's by one Joan Landy ; and afterwards he asked his lordship how he could suffer his bastard son to go about the streets in that poor way like a beggar ; and the answer my lord made was, that if he was sure the boy was his own son, he would take care of him, but that as several had to do with the boy's mother, Joan Landy, he very much doubted whether he was the father of it. Lord Altham and the defendant were sometimes on good terms, and sometimes not ; lord Altham wanted the defendant to join with him in selling reversions of the Anglesea estate, and sometimes the defendant would join, and sometimes he refused joining, and on the defendant's refusal to join they disagreed. He saw my lady twice at Dunmaine ; he never saw any child in the house there, and never saw any signs of my lady being with child.

*Cross-examined*—He believes the discourse with lord Altham was in 1725, 1726, or 1727 ; he believes it was after he took the opinion of counsel on my lord's case. My lord was at Dunmaine when deponent saw the child at Ross ; he can't tell whether my lady was there or not. Deponent was every year at Ross from 1707 to 1720, for he went the circuit to Ross at least once a year during that time. He believes he first became concerned for Lord Altham before 1720.

Aaron Lambert knew the late lord and lady Altham, having let Dunmaine to his lordship about the year 1711 ; my lady came there about two years after, and continued there for about two and a half years. Deponent lived at Ross while my lord and my lady lived at Dunmaine, and lent his lordship the

sum of £500 and some plate, and was frequently at Dunmaine to dun my lord for the money. He never heard that my lady had a child during her stay at Dunmaine, nor never observed her to be with child, nor never saw a child about the house. One Sutton, a surgeon, and Taylor, lived with my lord at Ross before my lady came over. Deponent heard that Sutton came over from England with my lord, but was turned out of the family for excessive drinking in two or three months after my lady came to Dunmaine. Afterwards, when Sutton was living at Ross, my lady sent for him to attend her while deponent was dining with him; he refused to come twice, but went over to Dunmaine the third time he was sent for, and attended my lady there for about a fortnight. This was about two months after he was turned out of the house. He does not believe that Joan Laffan ought to be credited on her oath; she is a woman of infamous character, and was only an obscure servant in the family when my lord and lady lived at Dunmaine. He never saw her take care of any child in the house at Dunmaine, and does not believe she ever took care of any child. He was at Ross at the time of the separation between my lord and my lady, but cannot recollect the year; he saw my lady coming to Ross that day in a four-wheel carriage, but cannot tell whether it was a chariot or a chair; it was duskish when she came, but he believes the candles were not yet lighted; a great many people came out of their houses to see her pass by, and Mrs. Heath, her servant-maid, was with her, and she put up at Mr. Butler's. It was the general reputation in the country that my lord had no issue. My lord and the defendant were sometimes friends and sometimes not, and my lord

would sometimes turn the defendant out of doors ; deponent was once in the house when they disagreed about a dog or a hound.

*Cross-examined*—He says that he was never away from Dunmaine for two months together when lord Altham lived there. He bought his commission the year he came to Dunmaine ; the first year he was quartered at Ross and the next at Dublin ; when he had done his duty he had the liberty of going where he pleased ; the officers used to do duty for a fortnight, and then go where they liked for a month together. He cannot be positive where he was quartered in 1715, but believes he might be on Dublin duty that year ; but he went to the country several times that year, and was never three months together at any quarters without seeing Dunmaine. He could tell what ailment lady Altham had when Sutton attended her, if leave was given him. He remembers the death of queen Anne, he remembers his regiment going into mourning ; he believes they were then quartered in Dublin ; sickness has impaired his memory as to time, but not as to facts. The defendant, lord Anglesea, never sent deponent any venison, as he did to other people, but yet when an affair of this sort requires his attendance, deponent would, for the sake of justice, come to serve him, though he should be forced to come in a horse-litter. It was impossible for lady Altham to have had a child without his knowing of it, or at least being told of it by the tenants about Dunmaine, whom he often saw. Lord Altham was inconsistent with himself, for one day he was fond of deponent, and another he was not, and he had frequent quarrels with him about his money ; one morning his lordship applied to the Government to

have the deponent broke, and that very day invited deponent to dine with him. He believes Mrs. Piggott was at Dunmaine several times, and has heard that Mrs. Giffard was there after lady Altham came down to the country.

*William Elmes* lived about a mile from Dunmaine in 1714 or 1715 when my lord and lady Altham lived there. Of the servants there he remembers Anthony Dyer, my lord's gentleman; Martin Neife, the smith; Rolph, the butler; one Cavanagh; and Mrs. Heath, my lady's gentlewoman. He remembers also Joan Laffan, and Joan Landy, who was the kitchen-maid, and was with child at the time my lady first came to Dunmaine, and at that time in my lord's service there. She went away because she was with child, and went to the house of her father, James Landy, who had a house on the lands of Dunmaine, where she was brought to bed of a boy. Deponent went to see her about a week or ten days after she was delivered, and having a curiosity to know who the father of the child was, asked her the question, to which she answered it was my lord's child; and deponent saw the child from time to time afterwards when it was about half a year old, and a year old, at Joan Landy's father's house. When lady Altham quitted Dunmaine, the child was brought there, being then, as far as the deponent could judge, not less than three years old. There was no coach-road made to Joan Landy's house, but only a short way my lord made to go a-hunting. One day as deponent came to Dunmaine, he met my lord at the door, and the child was there at the time, and while the deponent stood there, Joan Landy looked in at the gate, and my lord espy'd her, and called out to the servants with an

oath to bring out the hounds, and set them at the whore, for that he would not for £500 let the boy know that that whore was his mother. Old James Landy's house was soon after ordered to be thrown down; the child was kept there all along in a poor way till he came to Dunmaine House. The child was always reputed to be a bastard, and never was at Dunmaine House during my lady's abode there. Landy's house was a shepherd's house, but a very poor one, and had only one chimney in it; it consisted but of one room, with a partition of sod and stone; there was no glass window in it; it was not whitewashed or plaistered, nor was any alteration made in it when Joan Landy came to live there; there was no furniture in it but a large straw bed, and all the bed-clothes not worth a shilling. When the child lived there he was clad in rags, with old flannel blankets about him, but when he came to Dunmaine House lord Altham sent for a tailor, and ordered him some clothes. He knew Joan Laffan, she was in my lord's service as a laundry-maid, and was there in my lady's time and some time afterwards. He never saw a child in her care. He thought she ought not to be believed upon her oath.

*Joan Laffan* was here called, and said that she knew Elmes, and believed that he was an honest man.

*Elmes* being asked a similar question about Joan Laffan, says that she was charged with stealing several goods out of my lord's house after he had left Dunmaine; he was high constable at the time, and saw various goods which were found on a search at the house of Joan Laffan's brother, where she was at the time; he cannot say that the goods were lord Altham's property, but they were all brought back to Dunmaine.

*Laffan* said that the goods found at her brother's house were of no value, and had been given to her by lord Altham. She was never laundry-maid, but dry-nurse, and attended master James Annesley, my lord and lady Altham's son.

*Mrs. Anne Giffard* lived within a mile and a half of Dunmaine when my lady first came to live there in 1713. They exchanged visits frequently, and deponent must have seen lady Altham at least once a month during the time she lived there; she saw her often in her dressing-room, and saw her dress herself. She never heard that my lady was with child, and never observed her to be so. Once deponent herself being with child, she was somewhat melancholy when her ladyship came to see her, and complained a little to her of the trouble it gave her, upon which her ladyship said, What, do you complain? I wish I was in the same condition. The child deponent was then big of, was since dead; if he had lived he would now be between twenty-nine and thirty years of age. Lady Altham and deponent went in lady Altham's chariot to the assizes of Wexford to see some men tried there for listing for the Pretender; they were one Walsh of Monashee; Masterson, his nephew; and one Doyle, a clergyman. It was the spring assizes, and my lady stayed at Wexford for about a week and then returned to Dunmaine; she and deponent lodged at Mr. Sweeny's at Wexford; she was never with my lady at Wexford but once, and believes my lady in about five weeks after went to Dublin. My lord and Mrs. Heath both rode there on horseback. Some men-servants went with them, but she cannot remember who they were.

*Cross-examined*—She and lady Altham went into the court-house but once, and lord Altham and Mr.



Cæsar Colclough went into court with them. She remembers seeing Mrs. Briscoe and a daughter of hers at Dunmaine after my lady was there; they stayed there a good time, the daughter the longest, about three months altogether.

*Mrs. Catharine Lambert* often came from Ross to visit lady Altham at Dunmaine when she was living there; she never observed my lady to be with child, nor ever heard, nor does deponent believe, that she ever was with child or had a child while she lived at Dunmaine or elsewhere.

*Cross-examined*—She admitted that she did not live with her husband. She was asked whether he was a man who ought to be believed upon his oath; the question was objected to, but it was held that a wife might be examined as to the character of her husband, but not as to his liberty or property. Counsel for the prosecution, however, waived the question.

*John Kerr* was clerk to Lord Chief Justice Forster, who tried Walsh and Masterson at Wexford; the trial took place on the spring circuit in 1715. Looking at a newspaper called *Pue's Occurrences* he finds that the trial was on the 16th of April 1715.

*Thomas Palliser, junior*, knew my lord and lady Altham when they lived at Dunmaine; he was then very young, but cannot tell what age he was of, only that he went to school at Ross. He used to hunt with my lord, who furnished him with horses. Four or five days before the separation my lord, Sutton the surgeon, Taylor the receiver, and deponent were coming home together from Burtown; and my lord told deponent that he was determined to part with his lady; and upon deponent asking his reasons, my lord replied, I find lord Anglesea will not be in friendship with

me while I live with this woman; and since I have no child by her, I will part with her. To which deponent made answer, My lord, you may do what you please, but I would not part with my wife to please anybody. On the Sunday morning my lord came to the deponent's bedside, and waked him, and deponent remembers he had dreamed a little time before that my lord had put out his eye; and my lord desired deponent to rise, for that he was going to church; upon which deponent offered to go along with his lordship, but he said deponent must stay at home to keep my lady company; to which deponent replied that Sutton and Taylor were at home; but my lord said they were not fit company, and insisted on deponent's staying; and told him that as he was to hunt the next morning, if deponent rid his horse that day, he would not be able to carry him; and therefore desired deponent to stay and breakfast with my lady, and then my lord went downstairs. The deponent accordingly went down into my lady's room where he had often breakfasted before. Deponent, having been some time with my lady, heard a noise, and presently my lord came into the room with some of the servants, and, having a drawn sword in his hand, made a thrust at deponent, and one Anthony Dyer, his servant, took the sword out of his hand; deponent then being hurried out of the room into another room, one of the servants cut a piece off the deponent's ear. (And deponent took off his wig to show in what manner his ear was cut.) Upon the oath he had taken, he had never attempted the virtue of lady Altham in any respect, and she was entirely innocent in respect to him.—There being such a contradiction between this testimony and that of

Joan Laffan, it was ordered that she should be sent for, and that the respective attorneys should go for her immediately, for fear of her being tutored previous to her coming to the table.—Deponent continues that he remembers Anthony Dyer, Charles the butler, Mrs. Heath, and Joan Laffan being servants in the house. He never saw a child in the arms of Joan Laffan or any other servant there. Joan Laffan used to wash the parlour, and he takes her to be a vile woman. There is not one gentleman in the country that would give Mr. Elmes a bad character; he never heard that he ran away with the public money of which he was appointed collector.

*Joan Laffan* being called on to repeat her account of the occasion of the separation, said that Mr. Palliser behaved very ill to the servants; that he put some horse-jalap into some of their drink, and used to tell my lady lies of them; for which reason he was so little regarded by them that he was forced to wash his own stockings. My lord laid a plot against him with some of the servants, and made Anthony Dyer and the other servants take an oath of secrecy. On the Sunday morning there was a fire ordered in my lady's room, and my lord pretended to my lady that he was obliged to go out to dinner; Mr. Palliser breakfasted with my lord, and they had a bottle of mulled wine for breakfast. As soon as my lord was gone out, Mr. Palliser went into my lady's room, and the plot having been laid before, a signal was made which brought my lord back; my lord ran back, up with his sword, and had him brought out of the room, and the groom came to Palliser and said to him, Is this the way you keep my lady company? And took out a case knife in order to cut off his nose, but he

was ordered only to cut off his ear. Deponent was standing by in the room, and she had the child in her hand, and he showed her the blood out of Palliser's ear; it was the soft part of the ear that was cut; and the child pointed at the blood that came out of the ear. Palliser was found in the room with my lord's silk night-cap on his head, but had his hat and wig on at breakfast. No man was ever admitted into her ladyship's room at breakfast.

(The Court said that Laffan had sworn nothing contrary to her former testimony; that she had only explained what she meant by the ear being cut in her first examination; but declared their surprise at the contradiction of the evidence on both sides.)

*Palliser, cross-examined,* says that he never saw Joan Laffan attend my lady at breakfast; it was Mrs. Heath who always attended her; for my lady was a proud woman, and did not love to have low servants about her. Though so intimate with my lady he never told her of my lord's intention to part with her. He was frequently requested by my lord to breakfast below-stairs with my lady; she was generally in bed with nothing on but a loose gown or wrapper; the maid was generally backward and forward in the room, and he knows not but it was by the direction of my lord. He is not certain what sort of cap he wore that morning, but believes it was a linen cap. He is positive there was no child there. Being asked what steps he took to resent usage he had met with from lord Altham; says he sent him a challenge the next morning, and posted his lordship for not meeting him; and that his father likewise challenged my lord to fight him, if his lordship thought deponent too young an antagonist. My

lord went out of the country soon after, and deponent pursued him out of the town with pistols.

*Thomas Rolf* came to Dunmaine with lord Altham as butler a little before Christmas 1713, and continued there till the latter end of 1715. He never heard my lady was with child, and never saw a child at Dunmaine, but has heard both my lord and my lady wish they had a child. He mentioned the servants who were with my lord during his time; among them Weeden, the coachman; Burk, the postillion; Arthur, the gardener; Anthony Dyer, my lord's gentleman; there was Smutty the dog-boy, but he was very ugly; one Joan Landy, the kitchen wench; little black Nell, a weeding wench, and others. There was likewise Mary Waters, chamber-maid, and Betty Doyle, a laundry-maid, and Mrs. Heath, my lady's woman. He never knew one Joan Laffan to live in the service. Joan Landy was turned away for being with child, and she went to her father's house, about a furlong from Dunmaine House, where she was brought to bed. Two or three days after he went to the house, because it was reported that my lord Altham was the father of the child, and he took the child in his arms, to see if he could find out who it was like, and asked her who she laid it to, upon which she said, to my lord; and deponent told her she was in the right of it, for nobody was better able to maintain it. The reason of his looking at the child to find out who he was like, was that he knew that others had lain with the child's mother. It was a little hut Joan Landy lived in, and she lay with her father, mother, and brother, on some straw, all together, and there were stakes drove into the ground to keep the straw up; it was all one room, and there

was a fireplace, but he cannot tell whether there was a chimney. The cabin was in the same condition when he first went there, as it was when he left Ireland; lady Altham never went to Landy's cabin, for she was too proud to go to such a poor place. The cabin was built a year before the child was born; there was a coach-road down the avenue, made a year before the cabin was built, to go to the church, the mill, to Mr. Palliser's and Mr. Giffard's, and the deponent overlooked the making of part of the road. M'Kercher came to his house in Mary le Bon in England, and sent in dinner there, and asked deponent to dine with him; and asked him questions, whether lady Altham had a child, and what servants were in the house in his time, and if he would accept a lieutenancy. There were two gentlemen with M'Kercher; one whom they called Sir Thomas. M'Kercher came a second time and asked if he had said anything about a lieutenancy. My lord, and my lady, Mrs. Giffard, Mrs. Heath, and deponent went to the Wexford Assizes when the Pretender's men were tried; Mrs. Heath rode single, and so did deponent, and Mrs. Giffard went with my lady in the coach. He has heard that the child was christened by one Downes, a priest at a village called Nash, and that he was called James.

*Owen Cavanagh* was in lord Altham's service in Dublin, and for about a year after he and my lady came to Dunmaine; he was in Dublin when my lord received my lady at Mrs. Briscoe's. He never heard of my lady Altham's being with child, or that she had a child before the late rumour. Rolph was butler at Dunmaine, and my lord had a page, one Anthony Dyer, and one Mrs. Heath was my lady's

maid, and he remembers Joan Landy, a chair-woman. She was supposed to be with child, and after my lady came down, some busybody told her ladyship she was with child by my lord, and thereupon she was turned off. Afterwards, she lived in a cabin near the sheep-walk, where there was no room but one, and it had two straw beds in it.

*Anthony Dyer* waited on my lord five or six years; he was in my lord's service before my lady came, and after she went away. He never knew my lady was with child. Joan Landy was kitchen-maid at Dunmaine, and was turned away on its being reported that she was with child by my lord; she went to her father's cabin, where she was delivered, and deponent saw the child there a fortnight after her delivery. The cabin was a very poor one, all one room, and no glass window in it; there was a bush which was pulled in and out instead of a door. He went on purpose to see the child, and it was clad in a poor habit. He never saw lady Altham have or handle a child, but Joan Landy used to come by stealth the back way to the stables, and bring her child in order to get some subsistence from the butler. She used to say she was always afraid, because of having fathered the child on my lord. He lived three or four months in the service to the best of his knowledge; he never saw a christening at Dunmaine House, or any bonfires there on any such occasion. He has seen Mr. Lloyd, my lord's chaplain, but never saw him christen a child or heard him say he had.

*Mrs. Mary Heath* knew the late lord Altham and his lady very well. She entered their service as my lady's woman when she came over to Ireland in the year 1713. She lived with my lady till the day of her

death, in October 1729. She lived with her constantly except one week in Ireland. Lord and lady Altham went down to Dunmaine on Christmas eve 1713. They parted in February 1716-17. My lady certainly never had a child, and never was with child. She could never have had a child unknown to deponent. When my lord and my lady parted, she and my lady went to one captain Butler's, in Ross, in a four-wheeled chaise with a pair of horses. They got to Ross the same day at night, at dark night; for my lady made it as late as she could, for she had no mind to be seen coming in. It was on the third of February, and it was on a Sunday. Joan Landy was the kitchen-maid when they came down to Dunmaine, and she was then big with child; it was buzzed about that my lord got the child, and some said my lord's brother, and some said other people; but after Landy had been there two months, she went away to her father's house. Afterwards deponent sent to Juggy Landy, to bring the child for her to see, and she brought it when it was about two months old. It was in blankets then, and deponent gave Landy some clothes for it. It was brought to the gate; she would not allow it to be brought to the house, because she would not have my lord or my lady know anything of it. My lady would not care the child should be brought to the house. Deponent wanted to see it, to see who it was like. No child was ever christened in the house. My lady often wished she had a child, on account of a quarrel she had with Mr. Annesley. She does not know how the quarrel began, but my lady came up one day after dinner, and was crying. I asked her What was the matter with her ladyship? She said That brute below, meaning the defendant,



had said he wished she might never have a child ; and my lady said she wished she might but have a child to inherit, and she did not care if she was to die the next hour. The time she was away from my lady she left my lady in Dublin for a week, and went to Dunmaine ; she was never away from her a night in Dunmaine. She remembers going to Wexford.

My lady went there to hear the trials at the assizes, and it was about the Pretender's men, as they were called ; and my lady told me there was one Walsh tried, and how handsomely he pleaded his own cause, and the defence he made ; and there was one Mr. Masterson, who was picked up in the court at that time and tried. We came to Dublin the May after ; and what I remember it for is this, that it was king George the First's birthday ; and I remember it for this reason, that there were fireworks in the Custom-house yard, and this present lord Anglesea, that was Mr. Annesley then, had lodgings just opposite to it, and we went to his lodgings to see the fireworks ; my lady, my lord, and I. We were in Dublin some time before the birthday ; I don't know, about a fortnight. In going to Wexford, Mrs. Giffard went in the chariot with my lady, my lord went on horseback, and I went on horseback, and Rolph went on horseback, and Mrs. Giffard's sister went on horseback, but what her name was I cannot tell.

I was at Dunmaine at the time of the separation. On Saturday night my lord said he would go out somewhere to dine the next day, but I don't know where, indeed ; but my lady begged of him not to go, for she hated he should be out on a Sunday ; but he said he would go ; and accordingly on Sunday morning he did go from the house ; and I heard a noise,

and was going downstairs to see what was the matter, and I met my lord coming up with his sword in his hand, and he said, Heath, I have found Tom Palliser in bed with my wife. I said, It was impossible, and that he was set upon by a set of villains; upon that my lord said, she would go out of the house; and upon that he sent for one Mr. Welman from Ross, and he came, and advised my lord, I believe, to turn my lady out; but she begged he would let her have one room in the house, and he need not come near her, till she wrote to my lord duke; but he would not hear her; he hauled her out of bed, and I advised her to come out; upon which we packed up some things and went into the four-wheeled chaise, and I believe it was duskish when we went out, and it was night when we got into Ross.

Was any child brought to take leave of my lady?—  
O no! no child indeed.

During your residence at Mr. Butler's in Ross, was there any child that my lady received in that house as her child?—No, no such thing.

Recollect the several places at which my lady lodged at Ross.—I believe she stayed two months or more at captain Butler's, and then we went to one Mr. Wright's, and then we went to one Mr. Croft's, and there we stayed till we came to Dublin.

During this time was there any child brought to my lady as her child?—No, there never was; I can say no more, if they racked me to death.

Joan Laffan's business was to wash the rooms, make the beds, and help the laundry-maid. She did not dry-nurse any child, for there was no child for her to dry-nurse. Deponent does not remember Edward Lutwyche, a shoemaker at Ross. She does not

remember my lady buying any shoes while she was at Ross. My lady wore braided shoes of several colours ; she certainly never bespoke a pair of shoes for a little boy. She never had a pair of white damask shoes while deponent lived with her. From Ross her ladyship and deponent went to Mr. Cavanagh's in Mary's-lane, where they boarded, and from thence they went to Mr. King's, an apothecary in Charles-street, where they boarded and lodged ; from thence they went to Mr. MacMullen's in Tash's-square in Mountrath-street, and there they were two months or more before they went over to England, which was about September 1724. Before they went to Mr. King's, deponent had gone down on to the Quay somewhere to look for lodgings, but she does not remember at whose house. She gave the owner of the house a pistole in earnest, but afterwards they did not like the house, and deponent went and told the woman of the house so, and that the doctor did not like that my lady should live upon the Quay, and she gave her back the pistole again. Her ladyship never did see the woman in her life, for she never knew anything of her. While my lady was at the places named, no boy did ever visit or wait on her as her child, nor ever could. MacMullen went with the deponent to see about the lodgings. After they went to England deponent had a letter from Mrs. MacMullen, giving her an account that lord Altham had died, which she went and showed at once to my lady, who said nothing at all. My lady had no jointure on the estate which went to lord Anglesea ; she was supported by £1200, the remainder of her fortune, in the duke's hands, for which he allowed her £80 a year, and gave her £80 more, and when he died left her

£100 a year. My lady died in October 1729. She went into mourning for my lord ; a Norwich crape, that she had had for my lord duke, and which she made a night-gown of when king George the First died.

I know Mr. M'Kercher ; he came to my house, I live in St. Andrew's court, and he came there. He was a stranger to me, and begged my pardon, and said he came to ask me some questions about my lady Altham, Whether she ever had a child?—I told him, She never had one while I lived with her, I could take my oath. Then he told me how this Mr. Annesley was recommended to him by two lieutenants ; one of their names was lieutenant Simpson, but the other I do not know ; and then he told me how he came to him, and that he, Mr. M'Kercher, gave him ten guineas ; and then Mr. Annesley told him he had no lodging, and did not know where to get one. He said his house was small, but if he would lodge with him he might, and took him in. He then showed me a list of the servants' names, and my name was crowded in at the top, and I laughed at it. There were several other names, some that I did know, and others that I did not ; there was Neife, and Magher the butler, after Rolph went away, and there was Juggy Laffan ; and with that I said, What can she know of this affair ? Why, says he, Madam, she says that she saw the old parson Lloyd christen it ; I suppose you know him, Madam ? Ay, says I, I knew him very well, but I cannot think how she knows anything. Why, says he, she says she came to Dunmaine about a quarter of a year after my lord and lady came from Dublin. So she did, says I, but that was the last time we came down from Dublin. He

then thanked me very kindly, said he was very well satisfied with what I had told him, that he would go home and wash his hands of them, and turn them all out of doors, and would not for a thousand pounds that he had not seen me; for, says he, if you were dead, my lord Anglesea would lose his estate and title, as sure as you are alive, there would be such bloody swearing. Says I, Sir, I am sorry you have been so imposed upon, for I assure you my lady had not a child.

Did you acquaint Mr. M'Kercher at the time of this discourse, or offer to show him this letter of Mr. MacMullen's?—Yes, and he told me, that Juggy Landy did not deny that she had a child by my lord, but that it died young.

When lady Altham returned to Dublin after the Wexford assizes she lodged at Mrs. Vice's in Essex-street. She was not then with child, and never had a miscarriage. Deponent never told Catherine MacCormack that my lady was miscarried; she never told her anything as a good piece of news. Alice Bates was a maid at Mrs. Briscoe's, but deponent never had discourse with her of my lady's being with child. She never called Mrs. Briscoe out of bed when she and her daughter were at Dunmaine. When lady Altham came to Dunmaine there were some cups and saucers that had very ugly, nasty figures on them, indecent figures, and my lady never cared to have them used; but one day the housekeeper had got some of the saucers to put the dessert on, and there happened some words at the table, and my lord threw them on the ground; but my lady was not in any sort out of order that night. Deponent remembers Sutton; my lady never liked him, and he went from

the house; she does not recollect that he was ever sent for from Ross. She knew Mrs. Shiels, the midwife at Ross, and Dennis Redmonds; but she never gave him directions to fetch her to my lord's house. She cannot be positive whether my lady was ever let blood. No particular person was sent for the afternoon that the saucers were broke. She never had any discourse to this purpose, that if my lady was to be affrighted at this rate, she would never go on with a child.

*Cross-examined*.—When lady Altham came over to Dublin, she lodged at captain Briscoe's, whither lord Altham was brought to be reconciled. They went straight from there to Dunmaine, and did not go to Mr. Vice's at that time. My lord and lady met on the 4th or 5th of December, and got to Dunmaine on Christmas eve. Mrs. Briscoe and her daughter were at Dunmaine, they were there on St. George's Day; afterwards my lord went up to Dublin, and Mrs. Briscoe desired him to use her house while he was there. He went to her house for some little time, and after went to Mrs. Vice's; and then they heard at Dunmaine of a great many quarrels that my lord was in; and my lady, when she heard of such doings, came up.

When was that?—In violent hot weather, whether in July I cannot tell; but it was a little time before the queen died, for I saw king George proclaimed at the castle. They were then at Mrs. Vice's; they stayed there from three weeks to five weeks; and then they returned to Dunmaine. They remained there till the May following, that was the birthday of king George the First, when she went to Mrs. Vice's, where she stayed above a year. All of Mr. Maurice

Annesley's daughters, Cherry, Sarah, and Dolly, visited lady Altham when she was at Mrs. Vice's the second time. On the occasion of one of the visits to Mrs. Vice, deponent had a quarrel with lord Altham; he was making a great noise with a chair, and she went to take away the chair, and he took hold of her head-clothes. My lady did not scream out on that occasion, for she would rather have been killed than any one should have heard it. Deponent did not know anybody called Lucas. There was a quarrel, and my lord said he would send for one Lucas to see whether my lady was with child; for if she was not he would turn her off, and would not live with her; but he would know whether she was with child before he turned her away. She could not say whether my lady was confined to her chamber after this, but she is certain there was no miscarriage. She never knew of my lady seeing the woman from the house on the quay; though she might have seen her when she was out of the way; there was never any conversation between her and my lady about the pistole being returned. It was returned to MacMullen, who gave it to her or to my lady. Deponent knew one Mr. Hussey; she saw him at her house in London, where they discoursed of this affair, and she told him several times that my lady never had a child. On her oath she did not tell him that the plaintiff was greatly wronged, and that she knew more of that affair than anybody. She first heard of the report that Mr. Annesley was on board Vernon's fleet when she was sent for by the duchess of Buckingham; she had not seen Hussey at that time. My lady was lame when she came to Dublin from Ross; by degrees she lost the use of her limbs from that disorder. The

disorder began at Ross ; she was never bedridden ; she was never impaired in her senses ; till the night before her death she had her senses as perfect as anybody in court, and could manage all her affairs.

*Alderman Robert King* knew lady Altham, who came to lodge in his house in June 1723 ; he never heard her say she had a son ; deponent frequently heard her lament her misfortunes, but never heard her talk of a son. He cannot tell whether she was reputed to have a son, but as he never heard her talk of having one, is induced to believe she never had. She had a paralytic disorder, but it did not affect her understanding. He never saw any one visit her but one Mrs. Mears.

(The counsel for the plaintiff being asked whether they would cross-examine this witness, Mr. Harward answered, That if they were as well acquainted with all the defendant's witnesses as they were with Mr. Alderman, they should not cross-examine any of them. The Lord Chief Baron observed that the counsel on both sides were very polite gentlemen this morning, and wished their understanding might continue.)

*Elizabeth Doyle* came to Dunmaine the night before my lady came, and was in service there as a laundry-maid for about a year, when she married out of the family. After she had left the service my lord came to her and asked her if she would dry-nurse Juggy Landy's child. She told him she would dry-nurse a child for him, but not for Juggy Landy. She cannot say how old the child was then. She never heard of my lady's having a child ; if she had had a child she would not have concealed it ; for she would have been proud of it ; for she has heard her say she wished to have a son or daughter. She does not remember any



christening at Dunmaine, nor any rejoicings on such occasion.

*Cross-examined*—She knows Mr. Jans, but not Mr. Reily; she does not know David Howlet. She never had any discourse with any one about my lady having a child, and never said she had one.

*Martin Neife* was a smith at Dunmaine; he lived there for a year before my lady came, and for all her time; he never saw a child there, but a bastard child of Juggy Landy's, who was brought there about two months after my lord and lady parted; in a little time after my lady went away, the child was taken into the house. He saw Joan Landy when she was with child, and saw the child twenty times in her arms, when she used to come about the house of Dunmaine, and especially when my lord was abroad, she used to come; for she used to ask, Is my lord abroad? He often saw her come in the back part of the house, where his forgo was, to get something to eat and drink; she received meat and drink from the butler, called Thomas Rolf. She never nursed a child except her own. The child was afterwards brought to Kinnay, when my lord went to live there, and deponent saw him there with my lord. He saw the child afterwards at Dublin, at College Green, playing amongst the boys, most of whom were shoe-blacks; he was neither well clad, nor had shoes on, and deponent believed my lord lived at that time at Proper-lane. To the best of his knowledge the boy was between four and five years old when he saw him at Kinnay. The boy was there reputed by every one of the servants a bastard son of Joan Landy's, and whenever he did amiss my lord would have him whipped; and deponent heard my lord once say,

Damn the bastard, he will never be good, because he has Juggy Landy's blood in him ; and my lord desired the dogs to be let at the mother, if she called at Kinnay. He was in the house the day of the separation of my lord and my lady ; that was on a Sunday. My lord called him and all the men-servants in the house up, and appointed to dine at one Bennet's, but he did not leave the land of the town before he returned ; the deponent met his lordship going upstairs with a drawn sword in his hand, and asked him where he was going ; and my lord ordered deponent to go along with him, and presently deponent heard the hue and cry in the room ; and afterwards he went with my lady to Ross at nightfall, and nobody was with her but Mrs. Heath, and she went in a four-wheeled chair. No child was brought to my lady to take leave of her as she was going away, and deponent never saw a child there. The child called Jemmy Landy was with his nurse that day ; Juggy Landy, his mother, was his nurse. Being asked why he called her his nurse, he says, because he saw her nurse him, and if he did not call it right it was because he was no scholar. He knew Joan Laffan, but he did never know her attend any child at Dunmaine.

*Cross-examined*—The child was taken into the house at Dunmaine before my lord left the country, and was very ill-dressed then ; and the clothes he first had at Kinnay were worse than those he had at Dunmaine ; but my lord afterwards bespoke better clothes for him. He had a habit and a little petticoat at Kinnay, and went to school to one John Mahony near the Curragh of Kildare. The habit was made of a slate-coloured frieze. He saw him dressed in his

first coat and breeches at Dunmaine, and they were red. The way he came to appear was that he happened to be shoeing a horse for a man at Kildare, who came from the county of Wexford, and happening to talk of this affair, the deponent desired him to tell lord Anglesea that he was alive, and that he would tell what he knew of the matter; and desired he might be sent for, if occasion required, to give his testimony. The man's name was King, to the best of his knowledge, and it was mentioned in discourse, that the man said he heard that the right heir to lord Anglesea was come over. Deponent said, if he heard he was the right heir, it was from those who knew nothing of the matter of it; for that deponent knew my lord had no son but by Juggy Landy; and hearing it talked of in the county of Kildare, he said it was Jemmy Landy that was come over. The child was treated by the servants as a bastard son of Joan Landy; he never saw him dine with my lord, but he eat with the servants. He heard my lord direct the hounds to be set at Joan Landy; William Elmes was present at the time. He heard my lord say that he would not wish for £500 that Juggy Landy was the mother of the child, and that he would give £500 more that he had got the child by an Englishwoman. The child was called in all the house Jemmy Landy; and sometimes the servants called him Jemmy Annesley, but he never heard him called young lord Altham.

*Ann Caulfield* knew lord and lady Altham when she lived about a mile from Dunmaine. She never heard of lady Altham having a child till of late, and she sometimes went to Dunmaine House about business, and never saw any signs of her being with

child. She knew Juggy Landy, and that she had a bastard, which was reputed to be my lord's son. The child went to school at one Patrick Furlong's, and he went to school part of the time from my lord's house. My lord Altham some time after the separation came to Furlong's, and asked Furlong, Where is Jemmy? and my lord said he would horse-whip Furlong, if he would let that bastard go near Juggy Landy.

*Cross-examined*—She never heard till within these two years that Juggy Landy's child was dead, but she heard that Juggy Landy had a child by her husband. She knows Father Downes, and she is a Catholic; but by virtue of her oath, he never promised to give her absolution for what she was to swear in court.

*William Rowle* lived within a mile of Dunmaine, and was acquainted with my lord's family; my lord told him several times he had a child by Juggy Landy; he heard my lord say he never had any issue by my lady, and he never expected to have any. If my lord had any child by his lady, deponent must have known it, for he was as free with my lord as if he had been my lord's equal. He is a farmer, and used to go hunt with my lord, and my lord stood godfather to one of his children. When the child was brought home to Dunmaine, my lord named it himself James Landy.

*Cross-examined*—The child was between three and four years old at that time, and could not speak English.

*Michael Downes* knew the late lord and lady Altham at Dunmaine in the parish of Tinthorn. My lord and lady often came to see him, and he used

to go often to see my lord, either once in a fortnight or once in three weeks, and then he used to dine and sup at Dunmaine House with my lord and his lady, at their own table. He is a registered priest, and has lived within a mile of Dunmaine forty-two years past. He never heard that lady Altham had a child, the common reputation of the country was that she never had a child; if she had had a child he would have heard of it, for Dunmaine is part of his parish. My lord used to call at his house very often after hunting to take a cup of drink, and he heard him wish he had a child by his wife. He kept a register, but did not register Protestant children. He was applied to to christen Joan Landy's child, but as my lord and he were on good terms he was loth to christen the child where it was, lest it might offend my lord; but the mother brought it to one David Baron's house at Nash, when the child was about a fortnight old, and there he christened it; but he first inquired who was the father of the child, and was told that lord Altham was; he afterwards told my lord that he had made a Christian of the child, but had not received any retribution for it; that my lord said it was well done, laughed, and said he would requite him hereafter; and then my lord added, It seems they put the child upon me. He named the child James, by direction of his grandmother, who said my lord directed him to be called so. He did not christen the child by two names. He saw the child at Dunmaine afterwards; he went to see my lord there, and as he went upstairs, my lord said to the child who was sitting in a chair, You son of a whore, why don't you make a bow to him who made you a Christian? He saw the child going to school at

Pat Furlong's. He used to register legitimate children, but did not register natural children; but had my lord desired it he would have registered the child. The inhabitants generally bury their children at a place called Nash; if the child had been buried there he must have known it; he never heard what became of the child after he left Dunmaine.

*Cross-examined*—He remembers the time the Pretender's men were tried at Wexford; he was in some trouble then; it was in the April assizes, and he came home the day before the day of the great eclipse, which was the 22nd of April, and my lord and my lady came to Dunmaine a few days after, and they went afterwards to Dublin, and my lady continued in Dublin, and my lord returned to Dunmaine, and the deponent feasted with my lord there. The grandmother brought the child to be christened; she only said my lord was his father, and his directions were that the child should be called James. He did not desire any security when he found it was my lord's child, though it was his custom upon such occasions to get security that the child should not be a burthen on the parish. The first time he saw the child at Dunmaine he had a long coat without breeches and a cloak over it, and a laced hat; he was sure it was not silk; it was of a whitish colour to the best of his knowledge. The child was then between three and four years old. He married Joan Landy to one M'Cormuck, but was never desired to bury any child. It was common for people of his religion to send for persons of his function when their children died; but sometimes the poor people don't; but if a child dies under seven years old they

are seldom sent for, because it is supposed a child under that age cannot commit mortal sin.

*Put Furlong* kept a little school by the bounds of Dunmaine in the lands of Rathclaman. He had there a son of Joan Landy's called Jemmy; lord Altham sent him to school there, and he remained with him five or six months. He was about two or three years old when he came to school, and deponent went every morning for the child. It was about two months after the separation that the child was put to school to him. My lord called several times as he was hunting, and desired the deponent at his peril, that Joan Landy, the mother, should not see the child, and gave deponent the same directions at his own house when the deponent came to Dunmaine. He last saw Joan Landy at Ross, a year ago. When the child was at school with him, he had a habit of a dark colour, and wore a cap; the habit was not silk. He never heard lady Altham had a child. He saw the child after he left school, at Ross, when he was about four or five years old.

*Cross-examined*—When the boy was at school he was two and a half years or three years old; he was very smart, spoke Irish, the language his grandfather and grandmother spoke; he sometimes walked to school, sometimes the deponent brought him, and sometimes the other boys brought him. The winter coming on, the boy was taken from his school, and had made no great progress while he was at it.

*Arthur Herd*, a periwig maker by trade, lived in lord Altham's service about twenty or twenty-one years ago. My lord happening to come into the shop in Ross where the deponent was an apprentice, and hearing his name mentioned, said, You

are my countryman; if you come to live with me you shall never want a shilling in your pocket, a gun to fowl, a horse to ride, or a whore. He went to live with my lord at Carrickduff, and there was a child there reputed to be my lord's natural son by Joan Landy; the child did eat sometimes at my lord's table, and had a scarlet coat and a laced hat. The child was accused of pilfering, and deponent saw my lord correct him very severely at Proper-lane. Mrs. Gregory and a servant lived with my lord; the boy was kept worse at Proper-lane than anywhere else. He went to school at one Carty's, who kept a school in Plunket's-yard, near Proper-lane. My lord went from Proper-lane to Inchicore, and there the boy was corrected most severely, and my lord said he had the thieving blood of the Landy's in him, who used to steal corn and sheep. My lord, finding he could get no good of the boy, sent him to one Cooper's in Ship-street to lodge.

Being asked to give an account of this meeting with the lessor of the plaintiff, he said that on the 15th of November 1742, he was sent for to Enniscorthy by one Whelan, who told him, If he said two words cunningly his fortune was made; whereupon he went to the Bear Inn where Mr. M'Kercher was, and he asked him whether he had lived with my lord Altham, and spoke about Mr. Annesley. He answered he had lived with my lord, and cut Mr. Annesley's hair, and believed he should know him again, that he used to make him fiddles and play-things. When Mr. Annesley came in he kissed deponent, and deponent could guess at his face, but was not positive it was he till he gave some marks and tokens; Mr. Annesley said to him, Your name



is Herd. Deponent was told he should be called upon as a witness, and he said, that for the Angelsea estate he would not tell a lie. Mr. M'Kercher asked him who was Mr. Annesley's mother, and deponent said his answering the question would be of no service to him; that Juggy Landy was his mother, and that he did not see a feature in Mr. Annesley's face that was like lady Altham's; and then Mr. M'Kercher took the paper he was writing, tore it, and threw it in the fire. Deponent was employed in shaving my lord, and used to copy his letters, and was employed in other affairs. He remembers that as he was copying some denominations of lands to be sold in reversion to Mr. Onesiphorous Gamble, there was some talk to whom the great estate should fall, and my lord said it would go to Mr. Charles Annesley, but he would endeavour to get an Act of Parliament to settle it on his brother. My lord was so free with deponent that he cut deponent's hair, and when he had a cold, brought him a copper of mulled claret to drink. My lord asked him once in presence of Mr. Annesley, Arthur, is your mother a Protestant or a Papist? Deponent answered his mother was a Protestant; and thereupon my lord said, I'd rather than one hundred pounds that boy's mother was so. He told Mr. M'Kercher in Enniscorthy that Mr. Annesley sent several duties by him to his mother, and that he brought blessings from his mother, Joan Landy, to him, and that he remembered to have once brought a pair of stockings to him from her. Thereupon Mr. M'Kercher said it was common for Irishwomen to call one that they had nursed their own child, and bid deponent to think better on't; but Mr. Annesley

shook his head on this, and looked pale, and said it was strange deponent would not say as well as all the other servants said; to which deponent answered, You know, sir, I had better opportunity of knowing than the other servants, and I was nearer you than they.

*Cross-examined*—The boy was accused of pilfering a jockey belt, and some pigeons, which he confessed. He never knew of complaints made by Miss Gregory about him. When the boy had his scarlet coat at Carrickduff, my lord said, By G—d I keep him in his scarlet, because his mother had a red petticoat. He spoke Irish-like, for he used to say Dampier's Woyages, volume the third.—It was then proposed to ask the witness questions concerning Miss Gregory's relations to lord Altham, but this was successfully objected to because the answer might subject the witness to an action, and Miss Gregory was one of the defendant's witnesses.

*Henry Brown* and *Thomas Strong* both spoke to being at Carty's school with a boy reputed to be the bastard son of lord Altham.

*Thomas Barrett* knew a boy at Ross in the year 1724, who went under the name of James Landy; the boy lived in his house eight weeks and in his brother's four months that year. He was reputed to be lord Altham's son by Joan Landy; he came to Ross after lord Altham had left Carrickduff, as having no one to take care of him. Deponent saw the boy in Ross with his mother Joan Landy before he lived in his house, when he was about five years old or thereabouts. He was about eleven years old when he came to Ross the second time; and he came because one Cormuck, his mother's husband, would not encourage

him. He was sometimes called Jemmy Annesley, and sometimes Jem Landy.

*William Knapper* had lived fifty years at Ross, and never heard that lady Altham had had a child, and had heard a hundred times that she had not. He knew the late lord Anglesea, and never heard him mention such a child; he had some suspicion of some English affair, but not of this sort.

*George Brehan*, an attorney, knew a boy who was called Jemmy Altham at Ross, about the time of the death of king George the First. He was reputed to be lord Altham's natural son. He was in a miserable condition, and deponent took him in, and took him to his father's table, lest he should lie in the street. The boy used to run errands, and deponent remembers to have heard he misbehaved.

*Cross-examined*—He believes the boy was ten or eleven years old. He believes Joan Landy lived at Ross at the time, for the boys used to say, there is Jemmy Altham's mother.

*Elizabeth M'Mullen* lived at Ross, and knew lady Altham when she lived at Dunmaine. She saw her at captain Butler's at Ross, after she had left Dunmaine, and often visited her there. Deponent left Ross in 1719, and went to Dublin, where she seldom missed a week without seeing my lady at Cavanagh's, where she lodged. Deponent used frequently to see my lady when she had removed her lodging to Alderman King's; she lived there for about a year, and then came to lodge with deponent at her house in Tashe's-square, where she continued for eight or nine weeks, and from thence she went to England. She discoursed very familiarly with my lady, and heard her very often wish she had a child, by which she understood she

meant an heir to my lord's estate. She never heard my lady had a child, and it was the general reputation she never had a child. She never saw a child with my lord at Dunmaine, or at Ross. She was with my lady one night after supper, as she was preparing to sail, and her ladyship requested deponent to send her the first account of my lord's death; and she took the deponent by the hand to make her a promise of it; and said that the deponent was a faithful Irishwoman; and the deponent promised she would write to Mrs. Heath. In some time after she heard of my lord's death; she waited for the funeral, and observed who were the bearers, and what coaches there were, and sent over an account of it. She saw a boy at the funeral, crying, My father! my father! She turned him about to see who he was; and asked him, Who are you, and who is your mother? He answered, and said, Joan Landy is my mother, and lord Altham is my father. She wrote an account of it to Mrs. Heath, directed to her brother's in London. John Weedon, the coachman, and his wife, and Joan Landy's son were the only weepers at the funeral.

*Cross-examined*.—She lived at Ross with her father, who kept a great inn there, and my lord and lady used to visit and dine there before the separation. My lady was a proud woman, but she dined very often at deponent's father's house, up towards the hill, when he kept a house of entertainment. She was married in 1719, and went to live in Bride-street, and afterwards in Tashe's-square. When my lady lodged with deponent she was not able to walk, but as a woman had her in her arms; she never heard the cause of my lady's losing her limbs, and she never asked the cause of her disorder. She apprehended a

disorder in her ladyship's limbs when she was at Ross. She heard of my lord's death in the news, and in the elegy that was cried about. The funeral was about ten o'clock at night; she saw but one clergyman; she did not see the choir attend the funeral nor Mr. Hawkins, king-at-arms; she saw but one clergyman and the vergers of Christ Church attend the funeral, and she remembers the boy stood at the opening of the vault. She never told Mrs. Lenox that my lady miscarried; she never said to lord Mountjoy that the plaintiff was the right heir; and she does not recollect that she told Reily or his wife that the plaintiff had or had not a right to the estate.

*Mr. Darenzy* knew lord Altham at Carrickduff and continued his acquaintance with him till his death. He never heard him say anything of a child of his. There was a boy at Carrickduff, who he heard was a bastard.

*James Medlicot* knew lord Altham at Kinnay, and dined with him sometimes there and sometimes at Mr. Annesley's at Ballysax. At one of those places the conversation turned on the Anglesea title and estate; and my lord said he had reason to expect he should be lord Anglesea; and then added, When I shall die, as I have no son of my own, I don't care what shall become of the estate, or if the d—l should have it. He never saw a boy at Kinnay.

*Colonel William Becket* knew lord Altham about twenty years ago, when he lived in Essex-street and Inchicore; there were some animosities between my lord and his brother, and my lord said he wished his natural son had been a legitimate son, to cut the scoundrel his brother out of the Anglesea estate; he

never heard till lately that he had a legitimate son, but it was always reputed in the country that he had a natural son, and no other.

*Wentworth Harman* was well acquainted with the late lord Altham, from the year 1714 or 1715, and knew him when he lived at Kinnay; he very often heard my lord at his own house lament he never had a child by his wife; he heard him very often speak of a bastard child, which my lord said he could not tell whether it was his own child, or his brother's, or his footman's; and when my lord would dwell much on the subject, the deponent sometimes said, Why do you pester me in speaking about your bastard son? Why don't you go to your wife, and get a child by her? And my lord answered, Plague on the b—h, she can't bear one, and deponent heard my lord speak often to that purpose.

*Hannah Shaw* knew one Catharine M'Cormuck that papers rooms; she came to deponent about a year ago, and said she had a comical discourse with a young man who used to go about to get evidence for Mr. Annesley; and she told him lady Altham never was with child, nor had a child, but that women used to quack her with herbs. M'Cormuck further mentioned that she desired him not to call her as a witness, for that my lady never had a child, and she could not do them any service by her evidence, but that she would make against them.

This finished the evidence for the defendant, and on the plaintiff being called on for his reply, serjeant Marshall said he proposed to call evidence as to lady Altham's being at the Wexford assizes without any apparent signs of pregnancy; to restore the credit of Joan Laffan; and to show that some of the witnesses

produced on the part of the defendants had been prepared for the trial.

*Caesar Colclough* remembers the trial of Masterson and Walsh at the Wexford assizes; where they came off with honour, and shame to their opponents. He took as much care as he could to see justice done them. He does not remember to have seen lady Altham there; and she could not attend that trial and sit near him but he must have known it. He would not have sat by any lady at that trial, he was so solicitous for Mr. Masterson, who was his relation; and if any women of distinction had been there, he believes he should have heard it. He heard she was at the Wexford assizes in 1716, when Mr. Doyle was tried. Being asked if it was usual for ladies of distinction to go to an assizes on such trials, he says he never saw a lady at such trials.

*Cross-examined*—He says that some gentlewomen do go sometimes to the assizes. Mrs. Giffard's husband was a justice of the peace, but a poor man. Being asked if he believes Mrs. Giffard can be believed on her oath, says he cannot form a belief whether she can be believed; as circumstances happen persons may change, and that Mrs. Giffard is very poor.

*John Hussey* knew Mrs. Heath, and on being asked if he ever had a conversation with her and what passed between them, said, About two years and a half ago I went with a gentlewoman to Mrs. Heath's, to drink tea in Holborn, within thirty or forty yards of St. Andrew's church, and as Mr. Annesley was the common conversation of the coffee-houses then, we began to talk about him; I do not know whether she or I introduced the discourse; but she said, to the best of my memory, Nobody knows that young man's

affairs better than I, because I long lived with his mother, the lady Altham, and she expressed a great deal of concern for him, and the circumstances he was in; she told me withal, That the duchess of Buckingham sent for her three times, and that she was in private with her. And I have no more to say, my lord.

*Mrs. Heath, recalled,* said she knew Hussey; he had drunk tea with her several times, and they talked about Mr. Annesley. I have several times talked about it, and said, What a vile thing it was to take away the earl's right, and that my lady never was with child; and I cannot say no more if you were to rack me to death.

Did you ever give it in his presence as a reason why you should know the young man's affairs, that you had long lived with lady Altham, his mother?—No, my lord, I never did, and if I was to be torn in pieces, I would say no such thing.

*To Mr. Hussey*—Repeat the words you heard her say.

HUSSEY—She told me that the duchess of Buckingham had sent for her herself, and I cannot say who introduced the conversation first; but Mrs. Heath said, Poor gentleman, I am sorry for him from my heart; for no one had better reason to know his affairs better than I do; for I lived long with lady Altham, his mother.

MRS. HEATH—By all that is good and great, I never said any such word; I never thought that you were such a man; I have heard people say you were a gamester, and lived in an odd way, but I could never believe it till now, but I always took your part, and said you behaved like a gentleman.



*Thomas Higginson* was receiver of the late earl of Anglesea's rents from 1711 till 1716, and the Tuesday after Easter in 1715 he went to Dunmaine and asked if my lord was at home, and was told that he was abroad; my lady came down and saw him at the back door, and she was big-belly'd, and she gave him two glasses of white wine, and he drank to her happy delivery. On the next Thursday he came to the Wexford assizes, which began that year on Saturday, April the 16th.

*William Stephens* knew Arthur Herd, and saw him when Mr. Annesley came to the Bear Inn at Ennis-corthy, and he asked him what strangers those were, and Herd said, That is the right heir to the Anglesea estates, if right should take place.

*William Houghton* knew Arthur Herd very well, and happened to go into his shop about a wig, and had some discourse with him, and heard him say Mr. James Annesley was the true heir to the estate the earl of Anglesea possessed, as he verily believed, and that he knew him from a child at Dunmaine, and at Ross.

*Cross-examined*—He came to give evidence because he had seen a letter giving an account of the trial, in which it was said that Arthur Herd had turned tail to Mr. James Annesley, and had surprised every one, and he recollected what Herd had formerly said; and he said he would do all the justice in his power to Mr. Annesley; he had had no thoughts of coming, but his conscience pricked him, hearing that Arthur Herd had given such evidence.

*John Ryan* knew Mr. Downes very well, and Mr. Downes told him in discourse that lord Altham said to the child, You bastard, get up and salute the man who made you a Christian, and that he should get

£200 for giving this evidence. Deponent then told Mr. Downes that he was old, and his memory might be treacherous, whereupon Mr. Downes said that he would get a remedy, that he should get absolution from some other gentleman if his memory was not sufficient to support his oath.

*Downes* was recalled, and denied that he had had any conversation with *Ryan* about what evidence he was to give, and that he was to get £200 for giving his evidence.

Several of the *Dunmaine* servants were recalled and cross-examined about the members of the household, but contradicted one another without any particular result.

This concluded the evidence in the case; and before counsel addressed the jury the latter asked through their foreman what they were entitled to if they found a verdict. The attorneys agreed to allow them 20s. a day a piece; and the jury afterwards 'very charitably and honourably made a present thereof to the infirmary of the Inns Quay.'

*Mr. Prime Serjeant Malone* then summed up the case for the defendant. He dwelt first on the extreme importance which the birth of a son to lady *Altham* would have for the rest of the family; and on the improbability of such a birth taking place without a quantity of people being made aware of it. He then deals with the evidence in detail, pointing out the inconsistency of *Mrs. Cole's* story with *Mrs. Heath's*; and afterwards treating the evidence of all the witnesses to minute criticism. The main points he dwells on are the absence of all evidence that the birth of the child was ever brought to the notice of anybody of much higher rank than a servant; that

Joan Landy, who was, he alleges, then in Dublin, had not been called; and that supposing the child, called Jemmy, to have been lady Altham's, his being nursed by Landy was incredible, when it was recollected that she was at least suspected of having been with child by lord Altham. It is difficult to say from the report how much importance he attached to Landy's not having been called; but apparently he made a good deal less of it than counsel would at the present day. He then reviews his own evidence, and points out that it was to lord Altham's interest to acknowledge a legitimate son if he had one, as if he had a son he could have barred the remainders to the Anglesea estates, and raised money on the reversion. At any rate there was Wall's evidence that lord Altham had reason to believe that his position would be improved by his having a son. There was evidence too that lady Altham never admitted having had a son, and after lord Altham's death never took any steps to recover him, though she survived lord Altham by two years. The story of the transportation was merely matter of prejudice (which was true enough, technically speaking), and was incredible in itself. The jury must suppose that the boy had transported himself under the misspelt name of Hennesley. Giffard was not to be believed, because he came forward to betray a client, and merely to satisfy personal resentment. He was followed much to the same effect by the *Solicitor-General* and the *Recorder*.

*Serjeant Marshall* then addressed the jury on behalf of the plaintiff. He begins at once by dilating on the story of the kidnapping, which he returns to again afterwards, and seems to consider the most telling

part of his case. He then goes through the evidence, urging that lady Altham believed that M'Cormick was the father of Joan Landy's child, when she employed her as nurse for Jemmy. It is obvious that lady Altham was not visited by persons of quality (for good reasons, as he does not point out, when lord Altham's character is considered), so that it is inevitable that all his witnesses should be persons of low degree. The plaintiff had not called Joan Landy, because she had been tampered with; but the defence had not called her either. The evidence as to lady Altham's being at the Wexford assizes at the time of the birth of the child had broken down. She left the country within a month of the child's desertion by lord Altham, and had in fact never heard of it. She had only £100 a year till lord Altham's death, and was afterwards wholly dependent on the duke and duchess of Buckingham, and was also an invalid; so she was never in fact in a position to think of helping the child. As to lord Altham's interests, he could not bar the entail till his son was of age; but if he could get rid of his son he could make a good title to the reversion by joining with the defendant.

He was followed by *Mr. Tisdall* and *Mr. Walsh*.

The *Lord Chief Baron* then summed up; and after complimenting the jury on the attention they had paid to 'a longer evidence than ever was known upon a trial at law,' proceeded briefly to refer to the stories told by the leading witnesses. Almost the only comment he made on the evidence for the plaintiff was that if the defendant had kidnapped the plaintiff and afterwards attempted to have him hung for murder, this raised a natural but not a conclusive

presumption that he was the rightful heir. No man is supposed to be wicked without a design, and the design in this case must have in some way or other been relative to the title; but the defendant might think that the plaintiff would be troublesome to him though he was not the rightful heir. He then discusses the evidence of the defendant's witnesses, contrasting it with the contradictory evidence on the other side. Mrs. Heath's and Rolph's evidence he seems to consider very doubtful, particularly the latter. Of both sides he observes 'that there is a forwardness, an inclination to go on to serve their party, and that they want that candidness which gives a credit to witnesses.' On the defendant's side, apart from the kidnapping and the prosecution for murder, there is the extreme improbability that the birth of lord Altham's legitimate son should not have been made known to some at all events of the persons it so nearly concerned; and that he should be nursed by such a person as Landy. Oddly enough he does not notice the fact that Landy was not called. Lord Altham's conduct to the child might, considering his character, be consistent with the child's legitimacy; but this could not be said of lady Altham's neglect after her separation from lord Altham, especially if, as was admitted to be the case, the child, if legitimate, would inherit £1200 a year on lord Altham's death. Lord Altham would be able to bar his entail if he had a legitimate son, but this was subject to a point of law as to the devolution of the estate; and therefore, for the purpose of raising money, he might do better by joining with his brother in dealing with the reversion on the footing that he had no son. He concluded by a hint that a verdict

for the plaintiff would affect not only the defendant, but also remaindermen, who did not derive their title from him.

*Baron Mounteney* then followed, confining his remarks chiefly to Giffard's evidence as to the prosecution for murder, and commenting on the suspicious nature of Heath's evidence.

*Baron Dawson* then concluded the summing up, and the jury having retired for two hours, brought in a verdict for the plaintiff.

WILLIAM JACKSON AND OTHERS,  
1748

WILLIAM JACKSON AND OTHERS,  
1748

(18, *STATE TRIALS*, p. 1069)

*The trials of William Jackson, William Carter,  
Benjamin Tapner, John Cobby, John Hammond,  
Richard Mills, senior, and Richard Mills,  
junior, his son, for the murder of William  
Gally and Daniel Chuter.*

This case was tried on the 16th, 17th, and 18th of January 1748-9, at Chichester, before a special commission presided over by Mr. Justice Foster,<sup>1</sup> Mr. Baron Clive,<sup>2</sup> and Mr. Justice Birch.<sup>3</sup>

The case was introduced to the notice of the

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<sup>1</sup> See vol. ii. p. 232.

<sup>2</sup> *Sir Edward Clive* (1704-71), a member of the same family as Lord Clive, was born in 1704, called by Lincoln's Inn in 1725, represented St. Michael's, Cornwall, in 1741, became a baron of the Exchequer in 1745, was removed to the Common Pleas in 1753, and resigned in 1770.

<sup>3</sup> *Sir Thomas Birch* (1690-1757), of the family of Birchgrove, became a serjeant in 1730, a king's serjeant in 1745, and was raised to the Bench in the Common Pleas in the next year.



Grand Jury by a formal, but sound and temperate exposition of the law applicable to the facts that would be laid before them by Mr. Justice Foster. After pointing out the manifold evils that arose from the encouragement of smuggling by numerous persons of all classes, he explained that in order to justify a verdict of murder, it was not necessary to prove that any one of the accused actually did any act that produced death; but that if he were engaged in an unlawful enterprise that was likely to end in some one being killed, and did so end, any one of the accused men, though he had never anticipated such a catastrophe, might nevertheless be held guilty of murder. Also, if any one procured a murder to be committed, though he was not present when it was committed, he was responsible for the event as an accessory before the fact.

The Grand Jury accordingly found a true bill against Tapner, Cobby, and Hammond as principals in the murder of Chater, and against Hammond, Jackson, the two Mills, and Carter as accessories before the fact to the same murder.

They also found a true bill against Jackson and Carter for the murder of Gally.

The counsel for the Crown were Banks, Smith, Purcas, Burrell, and Steele.

*Foster J.* explained their rights of challenging to the prisoners: pointing out that if they

agreed to join in their challenges they might be tried together, but that if they did not, they would be tried separately. After consulting together they decided to be tried together, and the prisoners having pleaded Not Guilty, a jury was sworn accordingly to try the first case, the murder of Chater.

*Steele* opened the indictment, after which *Banks* opened the case. Having dwelt on the evils produced by the frequency of the practice of smuggling, and the failure to put an end to it by repeated proclamations of pardon, he came to the facts of the case. These, he said, were divided into four parts: what happened before Chater came to the White Hart; what happened after he arrived there, and before he was carried away to Mills' house; what happened after he came to Mills' house, and before his death; and what happened between that time and the time of the finding his body. He also pointed out that, in describing Chater's murder, it would be impossible to avoid describing Gally's murder as well, but the jury must remember that at present they had nothing to do with that as a separate offence.

The story began with the seizure in September of a quantity of uncustomed tea by one Johnson, who lodged it in the custom-house at Poole. In the night of the 6th of October the custom-house was broken open by a numerous and

armed gang of smugglers, who succeeded in carrying away the tea. On leaving Poole with their booty, the smugglers passed through Fordingbridge, where one of their number, Dimer by name, was recognised by Chater; on account of which he was afterwards arrested and lodged in custody at Chichester. In order to prove the identity of Dimer, Chater was sent under the care of Gally, a tidewaiter, to Southampton, on the 14th of February 1648-9, with a letter to Major Battine, a justice of the peace for Sussex, and surveyor-general of the customs for the county, who lived in the neighbourhood of Chichester. At Leigh they came across one Jenkes, and two men called Austen, who offered to go with them to show them the way to Stanstead, where Chater and Gally were informed the major Battine then was. On arriving at Rowland's Castle on their way to Stanstead, the party went to the White Hart, an inn kept by Elizabeth Paine, and she, suspecting that Chater and Gally intended some mischief against the smugglers, inquired of one of the Austens who the two strangers were, and what their business was.

He privately informed her, they were going to Major Battine with a letter. She desired he would either direct the two strangers to go a different way from Major Battine's, or would detain them a short time at her house, until she could send for Jackson,

Carter, and others. And she immediately sent her son William for the prisoner Jackson; and soon afterwards ordered her other son Edmund to summon the other prisoners, Carter, Edmund Richards, Samuel Howard, Henry Sheerman, William Steele, and John Raiss, who all lived near Rowland's Castle; and accordingly they all came; as also did Jackson's and Carter's wives. They were immediately informed by the widow Paine of what she suspected, and had been informed concerning the two strangers. Jackson and Carter being very desirous of seeing the letter to Major Battine, got Chater out of the house, and endeavoured to persuade him to let them see the letter, and to inform them of the errand to Major Battine. But upon Gally's coming out to them, and interposing to prevent Chater's making any discovery, they quarrelled with Gally, and beat him to the ground; Gally complained of this ill-usage, and said he was the king's officer, and to convince them, showed them his deputation.

Chater and Gally were very uneasy at this treatment, and wanted to be gone; but the gang insisted upon their staying; and in order to secure them, and get them entirely into their own power, they plied them with strong liquors, and made them drunk, and then carried them into another room to sleep.

During the two hours Chater and Gally slept, the letter was taken out of Chater's pocket; whereby it appeared that Chater was going to give information against Dimer. The secret being thus disclosed to the gang, the next thing to be considered of by the smugglers was how to save their accomplice Dimer, and to punish Chater and Gally, for daring to give information against him. For that purpose, whilst

Chater and Gally were asleep, several consultations were held.

It was first proposed secretly to convey Chater and Gally into France, at that time at war with England.

Their second scheme was, for all present to contribute threepence a week for the maintenance of Chater and Gally, who were to be confined in some private place, and there subsisted until Dimer should be tried. And as Dimer was done unto, so Chater and Gally were to be treated.

The third and last proposal was, to murder both.

With a view and intention to execute this last, and the most cruel proposal, Jackson went into the room about seven of the evening, where Chater and Gally lay asleep, and awaked them. They both came out very bloody, and cut in their faces; but by what means or what Jackson had there done to them does not appear. They were immediately afterwards forced out of the house by Jackson and Carter; the others present, and consenting and assisting; Richards, one of the company, with a cocked pistol in his hand, swore he would shoot any person through the head who should make the least discovery of what had passed there.

Chater and Gally were both put upon one horse; and, to prevent their escape, their legs were tied under the horse's belly, and both their legs tied together; and the horse was led by William Steele. After they had been thus carried about an hundred yards from Rowland's Castle, Jackson cried out to Carter and the company, Lick them, damn them, cut them, slash them, whip them. Upon which they whipped them and beat them over their heads, faces, shoulders, and other parts of their bodies, for the

space of a mile. With this cruel treatment, they both fell down under the horse's belly, with their heads dragging upon the ground. They were again put upon the horse, and tied as before, and whipped and beat with the like severity along the road for about another mile. And when they cried out through the agony of their pain, pistols were held to their heads, and they were threatened to be shot if they made the least noise or cry. Being unable to endure this continued and exquisite pain, and to sit on horseback any longer, they fell a second time to the ground. By this inhuman usage they were rendered incapable of supporting themselves any longer on horseback. Gally was afterwards carried behind Steele, and Chater behind Howard. The prisoners Jackson and Carter, with the rest of the company, still continued their merciless treatment of Chater and Gally ; but instead of whipping, they now began to beat them on their heads and faces, with the butt-ends of their whips loaded with lead. When they came to lady Holt Park in Sussex, Gally almost expiring with the torture he underwent, got down from behind Steele ; and it was proposed to throw him alive into a well adjoining that park ; in which well Chater was three days afterwards hanged by the same gang. Gally was then thrown across the pommel of the saddle, and carried before Richards. He was afterwards laid alone upon a horse, and supported by Jackson, who walked by him ; and was at last carried before Sheerman, who supported him by a cord tied across round his breast. When they came to a lane called Conduit-lane, in Rogate parish, in this county, Gally, in the extremity of anguish, cried out, I shall fall, I shall fall. Upon which Sheerman swore, Damn you, if you will fall,

do then ; and as Gally was falling, he gave him a thrust to the ground, after which Gally was never seen to move, or heard to speak more.

Jackson, Carter, and the others, in order to prevent the discovery of the murder of Gally, went about one of the clock on the Mouday morning to the Red Lion at Rake, in Sussex, a public-house kept by William Scardefield, whither they carried Chater all over blood, and with his eyes almost beat out ; and also brought the body of Gally. They obliged Scardefield to show them a proper place for the burial of Gally ; and accordingly he went with Carter, Heward, and Steele to an old fox earth, on the side of a hill near Rake, at a place called Harting Combe, where they dug a hole and buried Gally.

The same morning, and long before it was light, whilst some were employed in the burial of Gally, Jackson and Sheerman carried Chater to the house of Richard Mills the elder, at Trotten.

I am now come to the third period of time ; from Chater's arrival at the house of Richard Mills the elder, to his murder upon Wednesday the 17th of February.

And here it is that Richard Mills the elder first appears to be privy, and consenting to the intended murder of Chater. A private house was thought much more proper and safe for the confinement of Chater, than a public-house, at all times open to every man ; and therefore Chater was to be removed from Scardefield's. The prisoners and their companions being no strangers to old Mills, but his intimate acquaintance, and confederates in smuggling, where could Chater be so secretly imprisoned as the private house of the elder Mills ? And where could he be more securely

guarded than under the roof of one of their own gang? With these hopes and reliance, and in full confidence of the secrecy and assistance of old Mills, Chater was brought to his house by Jackson and Sheerman. When they came there they told old Mills they had got a prisoner; he must get up and let them in. Old Mills got up, and received Chater his prisoner; whose face was then a gore of blood, many of his teeth beat out, his eyes swelled, and one almost destroyed. I shall here omit one or two particular circumstances, which the witnesses will give an account of; which will show that old Mills was void of all tenderness and compassion.

Chater was received by him as a prisoner, and a criminal, and was therefore to be treated as such. Old Mills' house itself was thought too good a prison for him; and therefore he was soon dragged into a skeeling or outhouse adjoining to the house; wherein lumber and fuel were kept. And though Chater was in so weak and deplorable a condition, as to be scarce able to stand; yet to prevent all chance and possibility of his escape, he was chained by the leg with an iron chain, fastened to a beam of the outhouse. He was guarded night and day; sometimes by Sheerman, and sometimes by Heward, who came there that Monday evening. Thus he continued in chains, until he was loosened for his execution. But lest he should die for want of substance and disappoint their wicked designs, he was let to be fed, and just kept alive, until the time and the manner of his death were determined. During the whole time of this imprisonment, old Mills was at home, and in his business, as usual. He betrayed not the trust reposed in him; he acquainted nobody with what had happened, nor with



whom he was intrusted ; but, like a gaoler, took care to produce his prisoner for execution.

On Wednesday the 17th of February, there was a general summons of all the smugglers then in the neighbourhood of Scardefield's house, who had been concerned in breaking open the custom-house at Poole, to meet that day at Scardefield's. Upon which notice, all the prisoners, except old Mills, came that day to Scardefield's. And there were also present John Mills, another son of old Mills, Edmund Richards, Thomas Willis, Thomas Stringer, Daniel Perryer, William Steele, and John Raiss, Heward and Sheerman still continuing at old Mills', and there guarding Chater. It was at this consultation at Scardefield's unanimously agreed by all present, that Chater should be murdered.

This was a deliberate, serious, and determinate act, of minds wickedly and cruelly disposed, and executed with all imaginable circumstances of barbarity.

At this meeting Tapner, Cobby, and Hammond were first concerned in, and became privy and consenting to this murder. And there also Richard Mills the younger first became an accessory to this murder ; but he was so eager in the pursuit of it that he particularly advised and recommended it ; and said, he would go with them to the execution, but he had no horse. And when he was told that the old man, meaning Chater, was carried by a steep place in the road to Rake, he said, If I had been there, I should have called a council of war, and he should have come no further. <sup>1</sup>

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<sup>1</sup> It does not appear that any evidence was given of this statement.

About eight of the clock on that Wednesday evening, all who were present at the consultation at Scardefield's (except Richard Mills the younger, John Mills, and Thomas Willis) went from Scardefield's to the house of old Mills, where they found Chater chained and guarded by Heward and Sheerman.

They told him he must die, and ordered him to say his prayers. And whilst he was on his knees, at prayers, Cobby kicked him; and Tapner, impatient of Chater's blood, pulled out a large clasp-knife, and swore he would be his butcher, and cut him twice or thrice down the face, and across his eyes and nose. But old Mills, in hopes of avoiding the punishment due to his guilt, by shifting Chater's execution to another place, said, 'Don't murder him here, but carry him somewhere else first.'

He was then loosened from his chains, and was by all the prisoners (except Mills the father and son), and by all the gang that came from Scardefield's, carried back to that well, wherein Gally had before been threatened to be thrown alive. Jackson and Carter left the company some small distance before the others came to the well, but described the well to be fenced round with pales, and directed them where to find it; and said, We have done our parts, meaning, we have murdered Gally; and you shall do your parts, meaning, you shall murder Chater.

Tapner, in order to make good what he had before said (and happy had it been for him, had he shown more regard to his actions, and less to his words), after Chater had been forced over the pales which fenced the well, pulled a rope out of his pocket, put it about Chater's neck, fastened the other end to the pales, and there he hung Chater in the well until he was dead.

But soon after the body was let loose, and had fallen to the bottom of this well, which was dry, one of the accomplices imagined he heard Chater breathe, and that there were still some remains of life in him.

To put an end to a life so miserable and wretched, they threw pales and stones upon him. This was the only act that had any appearance of mercy and compassion; and it brings to my remembrance the saying of the wisest of men, fully verified in this fatal instance of Chater's murder—'The mercies of the wicked are cruelty.'

The body was found in the well in the state described on the 17th of September, and was identified as Chater's by the clothes.

*Smyth* then addressed the jury, repeating most of what had already been said, without adding anything material.

*Mr. Milner*, collector of customs at the port of Poole, proved that about the 7th of October 1747, he heard that the custom-house had been broken open, and on proceeding there found the outer door burst open, and all the tea carried away except a few pounds.

*Mr. Sheere*, collector of the customs at Southampton, sent Chater, who, he was informed, could give some information about the attack on the custom-house at Poole, to *Mr. Battine*, the surveyor-general. He sent him under the charge of one *William Gally*, a tidesman in the port of

Southampton. They set out on the morning of Sunday the 14th of February.

*William Gally*, the son of the deceased man of the same name, remembered his father's setting out on his journey to Mr. Battine. He saw the letter to Mr. Battine, and saw the directions. His father was dressed in a blue greatcoat with brass buttons covered with blue, a coat of light-brown colour lined with blue, and a waistcoat and breeches of the same; and he rode on a grey horse. Chater set out with his father, and had on a light surtout coat, with red breeches and a belt. He rode on a brown horse.

*Edmund Holton* saw Gally and Chater at his own house at Havant: Chater, whom he knew very well, showed him a letter addressed to Mr. Battine at East Marden, and the witness told him that he was out of his way, and directed him to go through Stanstead near Rowland's Castle.

*George Austen* saw two men, one on a brown horse, the other on a grey, at Leigh, in the parish of Havant, on the 14th of February. They asked the way to East Meon, but the one who had a blue coat on showed him a letter addressed to East Marsden, on which he told them they were ten miles out of their way, but said that he and his brother Thomas, and Robert Jenkes, were going part of their road, and would conduct them the best they could. They

arrived at a public-house kept by a woman called Paine, at Rowland's Castle, about the middle of the day, where the two strangers called for some rum. The widow Paine asked the witness if he knew these men, or if they belonged to his company. He told her they were going to Mr. Battine's, and he was going to show them the way. She said she thought they were going to do harm to the smugglers, and desired him to set them out of the way, which he refused to do. She then seemed uneasy, and she and her son consulted together. The son went out, and soon after the prisoner Jackson came in, and then several others. He knew none but Jackson and Carter. Jackson inquired where the two men were bound for, and the man in the light coat told him they were going to Mr. Battine's, and from thence to Chichester. Jackson then called for a mug of hot, which was gin and beer mixed, or something of the kind, and he and the strangers drank together. He did not see any ill-treatment of any one; he went away between one and two, and left the two men there. The widow Paine called him out of the house, and told him his brother and Jenkes wanted to speak to him; when he came out his horse was at the hedge by the back door, and his brother said he wondered why the two men did not go away; upon which he went back again into the house, and his brother was uneasy because he did so.

The widow Paine advised him to go home, and said the two men would be directed the way. He was uneasy at going without them, because he saw so many men come in, and imagined they had a deep design to do some harm to them. Jackson, as well as the widow, advised him to go home.

*Thomas Austen* corroborated his brother as to meeting the two men at Leigh, and going with them to Rowland's Castle. The prisoners were not there at first when they came, but in a little time Jackson came in, and then Carter. Before either of them came, the widow Paine spoke to him at the outer door, and asked him if he knew the two men, and said she was afraid they had come to do the smugglers some mischief, and that she would send her son for William Jackson. The witness stayed there till seven o'clock in the evening, and about that time Jackson struck one of the men in the face, who, to the best of his remembrance, had a blue coat on. They all drank pretty freely from one o'clock, and he was drunk, and went to sleep, and the two men were fuddled, and went to sleep in the little room. About seven o'clock Jackson went into the room and waked the two men, and when they came out of the room it was that Jackson struck one of them. After they came out, the two men went away with Jackson and Carter, and William Steele, and Edmund Richards. He did not re-

member that they were forced away, and did not see them upon the horses, nor did he ever see them any more. He did not see either of them produce his deputation, nor hear any high words. He was asleep the best part of the afternoon, and he did not see any ill-treatment but that one blow which he had mentioned.

*Robert Jenkes* corroborated the other witnesses as to going to the widow Paine's with the two men. He did not hear the widow Paine give any directions to send for anybody; but the prisoners Jackson and Carter soon came there. He stayed there about an hour and a half, and whilst he was there he did not see any abuse, or observe that either of the men was bloody. He had no conversation with Jackson further than that Jackson said he would see the letter which was going to Major Battine, and he believed Carter might have said so too. When he wanted to go away, Jackson would not suffer him to go through the room where the two men were; Jackson told him if he had a mind to go, he might go through the garden to the back part of the house. He did so, and found his horse there, and went away. He could not say why Jackson refused to let him go through the room, but believed it was for fear the two men should go away with him. He did not order his horse to be led round to the garden himself. George Austen and he went away together upon his horse.

Being cross-examined by Carter, he said that both Carter and Jackson said they would see the letter to Major Battine.

*Joseph Southern* saw Jenkes, the two Austens, and two other men sitting on horseback at the widow Paine's door drinking. He stayed there an hour, and saw them and several other persons, including Carter and Jackson, in the house; but he was not in the same room with them. He saw the two men come out to the door and go in again, and one of them had an handkerchief over his eye, and there was blood upon it. He met this man as he was going in, and heard him say to Jackson, 'I am the king's officer, and I will take notice of you that you struck me.' Carter was then in the house. The man who spoke thus to Jackson had a parchment in his hand when he met him at the door; he likewise saw a letter in his hand, and heard him say he was going to Mr. Battine with it. He went away between two and three o'clock, and did not know what became of the letter, nor had he heard either Jackson or Carter say what became of it.

*William Garret* was at the widow Paine's at about four o'clock in the afternoon, and saw Jackson and Carter and the two strangers there. The one who had a blue coat received a stroke upon his cheek, and the blood ran down it. Just as he came in, this man was standing up by



the back of a chair, and Jackson stood by him, and he heard Jackson say, 'That for a quartern of gin he would serve him so again,' by which the witness understood that Jackson had struck him before; he did not hear the man say he was the king's officer, but he heard Jackson say, 'You a king's officer! I'll make you a king's officer, and that you shall know.'

*William Lamb* went to the widow Paine's house on the 14th of February, about four o'clock in the afternoon; he found Carter and Jackson there, having seen the latter drawn aside by one of Paine's sons in his house at West Bourne. He found several other people at Paine's house, amongst whom were Thomas Austen, and two strangers, who he understood were going to Mr. Battine's house with a letter. He saw no ill-treatment while he was there; but he saw Edmund Richards pull out a pistol, and say, 'That whosoever should discover anything that passed at that house, he would blow his brains out.' He saw the man in the blue gabardine pull a parchment out of his pocket, and heard him tell the people he was the king's officer; his wig was then off, and there was blood upon his cheek. He saw a letter which he understood to be going to Mr. Battine; one Kelly and Carter had it in their hands, but he did not know how they came by it.

*Richard Kent* was at the widow Paine's house

on the 14th of February, and Edmund Richards told him that if he told a word of what he had heard or seen there, he would shoot him through the body. Jackson and Carter were not in the room when Richards said this.

*George Poate* was at Rowland's Castle on the 14th of February about seven in the evening, or after. He stayed there about an hour and a half, and as soon as he came there, he saw four or five men with greatcoats and boots on, most of whom were on their legs, as if they were just going. He went and warmed himself by the kitchen fire, sitting down by Thomas Austen, who was then asleep; he called for a pint of beer, and soon after he heard the stroke of a whip repeated three or four times in a little room that was at the corner of the kitchen, but did not see who gave the blows, nor who received them. Afterwards he saw seven or eight men come into the kitchen, of whom he knew the prisoners Jackson and Carter, and Steele and Richards, and two that went by the names of Sam and Harry. There were also two other persons there whom he had never seen before, and of whom he could give no account. He soon after thought he heard a blow, and saw Jackson in a moving posture as if he had just given a blow, and was drawing up his arm in a proper posture as if he were going to give another; but William Paine stepped up, and called

him a fool and a blockhead for so doing ; upon which he sunk his arm, and did not behave in like manner any more as far as the witness saw. They all went off about seven or eight o'clock, as near as he could guess, but which way he did not know.

*John Raiss* was at Rowland's Castle between twelve and one o'clock at noon ; he there found Richards, Steele, the prisoners Jackson and Carter, Little Sam, Richard Kelly, Jackson's wife, and Gally and Chater. He saw Jackson take Chater to the door, and heard him ask him if he knew anything of Dimer ; and Chater answered he did, and was obliged to go and speak against him. Gally then went out to keep Chater from speaking to Jackson ; whereupon Jackson knocked Gally down with his fist. Gally then came in again, and soon after Jackson and Chater. When they were all come in, the witness, with Chater, Jackson, and Edmund Richards, went into the back room ; there they inquired of Jackson, what he had got out of the shoemaker (meaning Chater), and Jackson informed them that Chater said he knew Dimer, and was obliged to come in as a witness against him. They then consulted what to do with the two men ; they first proposed to carry them to some secure place, where they might be taken care of till they had an opportunity of carrying them to France. When this

proposition was made, Jackson, Carter, Richards, and himself were present, and this resolution was taken to send them out of the way that Chater should not appear against Dimer, and afterwards it was agreed to fetch a horse and carry them away. Gally and Chater appeared very uneasy, and wanted to be gone, and thereupon Jackson's wife, to pacify them, told them that she lived at Major Battine's, and her horse was gone for, and as soon as it came she would show them the way to Mr. Battine's.

On being cross-examined, the witness said that at this consultation nothing was mentioned but the securing of them in order to carry them to France.

The witness having got thus far, was told to stand by, counsel for the Crown declaring that he would call him again to give an account of what passed on the 17th, after they had examined the next witness.

*William Steele* was at widow Paine's on the 14th of February. He was sent for by the widow Paine's son, who told him that he must go to the Castle, for there were two men come to swear against the shepherd, meaning Dimer. He came there about two o'clock, and found there Jackson, Little Sam, one Kelly, two men more, and Jackson's wife. Soon afterwards there came Little Harry, Carter, Edmund Richards, John Raiss, and Carter's wife. When

he arrived he found everybody sober as far as he saw, and they sat drinking together about two hours. Jackson took Chater out of the room to examine him about Dimer, and after they had been out for some time Gally went out to them, but soon returned, and said that Jackson had knocked him down, and the witness saw he was all bloody about the left cheek. Jackson came in with Chater soon afterwards, and Gally, addressing himself to Jackson, said he did not know any occasion Jackson had to use him in that manner, and that he should remember it, and took down his name in Jackson's presence. Gally likewise said he was an officer, and showed his deputation to the people that were in the room. The company continued drinking till Gally and Chater were quite fuddled, and went into a little inner room to sleep; this was about four or five o'clock, and they continued in the little room two or three hours. The rest of the company sat drinking all the time, consulting what to do with Gally and Chater. It was proposed to put them out of the way, because they should not appear against the shepherd, and it was proposed to throw them into the well in the horse-pasture, about half a mile from Rowland's Castle, but it was thought not convenient to put them into a well so near, for fear of a discovery. It was then proposed to join, and each man to allow them threepence a week,

and to keep them in some secret place till they saw what became of Dimer, and as Dimer was served, so these two people were to be served. There was no other proposal so far as he heard. While they were talking these things, the wives of Carter and Jackson said it was no matter what became of them, Chater and Gally, or what was done to them; they ought to be hanged, for they were come to ruin them, meaning the smugglers. About seven o'clock Carter and Jackson went into the inner room, and waked Gally and Chater, and brought them out of the room very bloody and very drunk; he, the witness, did not see what passed in the room, but was sure they did not go in so bloody; and he believed Jackson and Carter had kicked and spurred them. They set Gally, the officer, upon a black or brown horse, and Chater up behind him. Jackson, Carter, and Richards put them on horseback, and tied their legs under the horse's belly, and also tied their legs together; they then tied a line to the bridle, and the witness got on a grey horse and led them along. After they had turned round the corner, about twenty or thirty yards from the house, Jackson cried out, Whip them, lick them dogs, cut them; it was then dark and the company whipped and lashed them with their horse-whips, some on one side, and some on the other, with great violence on the face and head and

other parts of the body, and continued doing so while they rode about half a mile to a place called Wood's Ashes. Then they all alighted, and Little Sam gave all the company a dram or two, but none to Gally or Chater. As soon as they were mounted again Jackson and Carter cried out Damn them, lick them, whip them; and they were whipped as before for about a mile further, and then they fell down under the horse's belly, with their heads under the horse's belly upon the ground, and their legs over the saddle. They were immediately set up again, and their legs tied together in the same posture; and the company went on whipping them as before, till they came to a place called Goodthrough Dean, which was about a mile further. Then somebody pulled out a pistol, and said he would shoot them through the head if they made any noise whilst they went through the village; they then went on at a foot pace, and after they had got through the Dean they were whipped as before. When they came to a place called Idsworth they fell down again under the horse's belly, and some of the company loosed them, and set up Gally behind him, and Chater behind Little Sam; and in this manner they proceeded to lady Holt Park, which is about three miles from Idsworth, whipping the two men as before; but the lashes of their whips falling on the witness, as he sat before Gally,

he could not bear the strokes, and therefore they left off whipping Gally in that manner. Gally sat upon the horse till they got to lady Holt Park, and then being faint and tired with riding, he got down, and Carter and Jackson took him, one by the arms, and the other by the legs, and carried him towards a well by the side of lady Holt Park, where Jackson said to Carter, We will throw him into the well; to which Carter replied, with all his heart; and Gally seemed indifferent what they did with him. But some of the company saying it was a pity to throw him into the well, Jackson and Carter set him up behind the witness again. Gally became incapable of riding, and he was tied across the horse the witness had been riding, and the company led it by turns, Chater being still behind Little Sam. They went on in this way for about two miles and a half further, till they came to a dirty lane, and here Jackson and Carter went on, telling the rest of the company to wait. When they came back, they said that the man of the house to which they had been going was ill, and they could not go thither, and it was proposed to go to the house of one Scardefield. Little Harry here tied Gally with a cord and got up on horseback behind him, in order to hold him on the horse, and they went on till they came to a gravelly knap on the road, and Gally cried out, I shall fall, I shall fall;



whereupon Little Harry said, Damn you, then fall, and gave him a push, and Gally fell down, and never spoke a word more ; and the witness believed his neck was broken by the fall. They then put him on the horse again, and went away for Raike, to the sign of the Red Lion, which was kept by William Scardefield. Chater was taken into Scardefield's house, and about three o'clock in the morning was taken away by Jackson and Little Harry, and when Jackson came back to Scardefield's he said he had left Chater at old Mills' house, and that Little Harry was left to look after him, that he might not escape.

Two or three days afterwards the company met at Scardefield's again, to consult what to do with Chater. There were present the prisoners John Raiss, Carter, and Jackson, the prisoner Richard Mills the younger, Thomas Willis, John Mills (another son of old Mills), the prisoners Tapner, Cobby, and Hammond, and Thomas Stringer, Edmund Richards, Daniel Perrier, and the witness. John Mills proposed to take Chater out, load a gun, tie a string to the trigger, place Chater against the gun, and that they should all of them pull the string, to involve every one of them in the same degree of guilt ; but this proposal was not agreed to. Then Carter and Jackson proposed to carry him back to the well, and to murder him there, which was

agreed to by all the company, but Richard Mills the younger and John Mills said they could not go with them to the well, because they had no horses; and as it was on their (the other persons) way home, they might do it as well without them. So it was concluded to murder Chater, and then to throw him into the well. In the evening they went away from Raike to the house of the prisoner Richard Mills the elder, and found Chater in a back skeeling, or outhouse, run up at the back of Mills' house, a place they usually put turf in. He was chained with an iron chain, about three yards long, to a beam that went across the skeeling, about as high as his head. The prisoner Richard Mills the elder was at home, and fetched out bread and cheese for them to eat, and gave them drink, and made them welcome. Then some of them went to the skeeling, and the prisoner Tapner pulled out a clasp-knife, and opened it, and swore to Chater 'that knife should be his butcher,' and cut him over both his eyes, and down his forehead, so that he bled to a great degree. He was ordered by some of the company to say his prayers, for they were come to kill him, and kill him they would. Tapner said this, and some of the company were then in the skeeling, and the rest of them were in the house, but no one interposed to save Chater's life. When they had kept him there

as long as they thought fit, somebody of the company unlocked the chain, and set Chater on horseback, and John Raiss, Edmund Richards, Little Harry, Little Sam, the prisoner Tapner, Thomas Stringer, the prisoners Cobby and Hammond, Little Daniel, the prisoners Jackson, Carter, and the witness, set out with him for lady Holt Park, to carry him down to the well. When they came to Harting, Richards, Little Harry, and Little Sam went back, and when the rest came to the white gate by lady Holt Park, Carter and Jackson left them, but first told them they must keep along a little further, and they could not miss the well; that it was about 200 yards further, and that there were some pales round it, and to the right of it. On arriving at the well, Tapner, Stringer, and Cobby got off their horses, and Tapner pulled a cord out of his pocket, and put it about Chater's neck, and led him towards the well. Chater, seeing two or three pales down, said he could get through, but Tapner said, No, you shall get over, and he did so, with the rope about his neck. They then put him into the well, and hanged him, winding the rope round the rails, and his body hung down in the mouth of the well for about a quarter of an hour; and then Stringer took hold of his legs to pull him aside, and let his head fall first into the well, and Tapner let the rope go, and down fell the body

into the well head foremost. They stayed there some time, and one of the company said he thought he heard him breathe in the well; upon which they got a post or two and threw them into the well upon him, and there they left him.

In cross-examination the witness said he never heard Richard Mills the elder say he would not have the others murder the man; and he must have heard the others talking of murdering him when they were in his house.

*John Raiss* being recalled, corroborated the latter part of the evidence of the last witness; adding that at the meeting at Scardefield's the proposition to murder Chater was, to the best of his remembrance, first made by either Carter or Jackson, and it was agreed to by all the company; it was not then resolved how it was to be done, but only in general that he was to be murdered, and thrown into the well. Afterwards, when they came to Harting, Carter, Jackson, Richards, Little Sam, Little Harry, and Steele said, We have done our parts, and you (meaning the rest of the company) shall do yours. By this the witness understood them to mean that they had murdered Gally, and that the rest should murder Chater.

The prisoner *Hammond* desired the witness to be asked whether, when they were at Mills', he did not offer to ride away, and make a discovery,

but was prevented by the company. *Raiss* said he never heard him say anything about it ; but some of the company did threaten any of the rest who should refuse to go to the murder of Chater.

*Ann Pescod* said that two men came to her father's house on the 15th of February, about one or two o'clock in the morning, and called for her father. She asked one of them his name, and he said it was William Jackson. He was allowed to come in, but was told that they could not abide there, because her father was ill.

*William Scardefield*, of the Red Lion at Raike, said that in the night between the 14th and 15th of February, the prisoners Carter and Jackson, with Steele and Richards, came to his house, and called out to him, 'For God's sake, get up, and let us in !' He let them in, and they were all bloody ; he asked them how they came to be so, and they said they had had an engagement with some officer, and had lost their goods, and some of their men they feared were dead, and some were wounded ; and they said they would go and call them that were at the other public-house. And while he was down in the cellar, he heard horses come to the door, and some of the men went into the kitchen, some into the brew-house, and some into the parlour. He saw two or three men in the brew-house, and there lay something like a man before them by

the brew-house door, and he heard them say he was dead. Some of them calling for liquor, he carried a glass of gin into the parlour, and saw a man standing upright in the parlour with his face bloody, and one eye swelled very much, and Richards objected to his coming into the room. Carter, Jackson, and some others, including Steele, were then in the brew-house, and after they had drunk three mugs of hot, they got their horses out, and sent him down for some brandy and some rum, and when he came out with it, all the company were gone twenty yards below the house, though several of them came back to drink, one or two at a time. He did not know what became of the man he saw standing in the parlour, but he observed they separated into two companies, and one of the company, a little man, asked him if he did not know the place where they laid up some goods a year and a half ago. Then the prisoner Carter came back, and said they must have a lanthorn, and Richards fell into a passion, because he refused to go along with them, and when the company saw him coming towards them with a light they parted. He saw a horse stand at a little distance, and there seemed to be a man lying across the horse, and two men holding him on, and he believed the man he saw lying across the horse was dead, but he was not nigh enough to see whether he was or not.

On the Wednesday or Thursday following the prisoners Jackson and Carter, and all the rest of the company, came again to the house, and the prisoner Richard Mills the younger, and his brother John, were sent for, and came to them.

Two witnesses were called who identified the belt and the boots, that were found on the body in the well, as those worn by Chater.

*Sones* proved that the horse on which Chater set out was found about a month afterwards, and delivered to the owner.

*Foster J.* then informed the prisoners that the time had come for them to make their defence, and he repeated to each of them the particular facts the evidence had charged him with, and asked them severally what they had to say to clear themselves of that charge.

*Tapner* said he did not know they were going to murder the man, but Jackson and Richards threatened to kill him if he would not go with them, and he received three or four cuts from Hammond or Perryer, he did not know which.

*Foster J.* told him, that supposing he was threatened in the manner he insisted on, yet that would be no defence in the present case; and that in every possible view of the case, it was infinitely more eligible for a man to die by the hands of wicked men, than to go to his grave with the guilt of innocent blood on his own head.

*Cobby* and the two *Mills* denied any knowledge of an intention to kill *Chater*, and *Hammond* said that when he understood what the others intended, he wanted to go off to make a discovery of the matter, but was prevented by the rest of the company.

*Jackson* said that the man who said he would be *Chater's* butcher, was his butcher, and nobody else; he was not by when *Chater* was murdered, and was not guilty of it: to which *Foster J.* replied that he was charged with being an accessory before the fact to the murder, and not as being present at it.

*Carter* said he only thought the men were going to be put out of the way till they saw what would become of *Dimer*; and that he went along with the others to prevent mischief.

*Foster J.* then summed up the case, explaining the law as to principals and accessaries, and recapitulating the facts of the case; and all the prisoners were convicted either as principals or accessaries before the fact.

The next day *Carter* and *Jackson* were tried for, and convicted of the murder of *Gally*, on much the same evidence as that that had been given on the previous occasion; and all the prisoners were sentenced to death.

*Jackson* died in gaol a few hours after being sentenced. The others were all executed.

The body of *William Carter* was hung in chains,



in the Portsmouth Road, near Raike, in Sussex ; the body of *Benjamin Tapner*, on Rook's Hill, near Chichester ; and the bodies of *John Cobby* and *John Hammond* upon the sea-coast, near a place called Selsey Bill, in Sussex, where they are seen at a great distance, both east and west.

M'DANIEL AND OTHERS, 1755

## M'DANIEL AND OTHERS, 1755

(19, *STATE TRIALS*, p. 745)

STEPHEN M'DANIEL, John Berry, James Egan, and James Salmon were tried at the Old Bailey, on the 1st of March 1755, before Wilmot J.<sup>1</sup> and

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<sup>1</sup> John Hardley Wilmot (1709-1792) was born at Derby and educated at a school in Lichfield, where he was a school-fellow of Johnson and Garrick and four of his contemporary judges at Westminster, and at Trinity Hall. He was called in 1732. At first he practised chiefly in the country, and on the Midland Circuit, but having followed some local work to town, attracted the notice of Sir Dudley Ryder, then Attorney-General, and was appointed his Devil. In the course of a few years he refused a silk gown, a seat in the House of Commons, and a law officership; after which, in 1754, he retired to practise locally in Derby. He was nevertheless appointed a judge of the King's Bench in 1755. On Dudley Ryder's death the next year, there was a rumour that he would be created Lord Chief Justice if Murray could be persuaded to forego his claims to the post, which he could not. In the same year he was one of the commissioners to whom the Great Seal was committed on Hardwicke's resignation; and in 1757 refused the Lord Chancellorship, to which Sir Robert Henley was consequently appointed. After eight years' service in the King's Bench he twice attempted to exchange his position for the much less important and lucrative

other Justices, and Moreton the Recorder, for being accessory to, and aiding and so forth, Peter Kelly and John Ellis in robbing James Salmon on the king's highway in Deptford, and taking from him one handkerchief, two pair of leather breeches, one clasp-knife, one tobacco-box, one silver pocket-piece, one guinea, and one half-crown, on the 23rd of July 1755.

At the desire of Berry the witnesses were examined apart.

*Joseph Cox* proved the conviction of Kelly and Ellis at the Maidstone Assizes.

THOMAS BLEE—I have known the prisoner Berry eight or nine years, and M'Daniel twelve months last November. I never had any great acquaintance with Salmon till through Berry, in the month of June last. I have known Egan four or five years by his coming backwards and forwards to Berry's. I know

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post of Chief Justice of Chester, but without success. In 1766, however, he was appointed Chief Justice of the Common Pleas, the offer coming to him while he was on circuit, and his letter of acceptance being drafted by Yates, his fellow-judge. In 1770 he was again offered the Great Seal; he again refused it, and it was given to Yorke, whose melancholy death a few days afterwards caused it to be once more offered to and refused by Wilmot. In January 1771, Lord North having become Prime Minister, Wilmot once more refused the Chancellorship. In December of the same year he resigned, and lived for twenty years more. His reputation as a judge stands high; but his reluctance to take office, an unamiable feature in itself, seems to have been due as much to indolence as anything else.

Kelly and Ellis ; I believe they are now in Maidstone Gaol ; they were when I came away last Monday.

Tell the Court the first time you had any conversation with them.—I lodged at Berry's house, and worked for him ; Berry said to me in the beginning of July, Go to Mr. M'Daniel (he lived then in Scrub's-court, Holborn) and tell him I want to speak with him. I went, and he and I came back together to Berry's house. They both said, Tom, money grows scarce, you must give a sharp look-out for a couple to go upon the scamp now, and if you cannot get two, you must get one.

What did they mean by going upon the scamp?—That is to go upon the highway. I told them, as Kidden's was so bad an affair, I did not chuse to be concerned more. He was convicted last January twelvemonth, and executed at Tyburn. M'Daniel said, Damn your eyes, if you don't, it shall be the worse for you. Then Berry said, I might go about my business ; so I went away. The next morning Berry called me into his room, at a place called George-yard, at the upper end of Hatton Garden, and said, Go up to Mr. M'Daniel's house, and desire him to meet me in the fields about eleven o'clock. I did, and we went into the Spa-fields, and Berry came to us. They both said to me, Go, and look about the fields, and we will lie down on the grass, and see if you can pick up a couple of idle fellows that will do for the purpose, and introduce yourself into their company.

What did they mean by that purpose?—To go on the scamp were the words they said ; accordingly we three went into the fields several days, but could not meet with anybody fit for the purpose. I remember

one day in particular, it was Monday the 15th of July, that day they ordered me to go into the fields, and said they would come, and I sat there two hours before they came nigh me; then M'Daniel came to the top of the hill, and bid me come to the sign of sir John Oldcastle, a public-house, and said, my master was there; he and I went there, and down to the bottom of the yard; and in the farthest arbour but one, on the left-hand side there sat Berry and Salmon the breeches-maker. Berry bade me sit down, which I did; there we all discoursed together about doing this robbery. M'Daniel said, We'll do the thing somewhere towards Blackheath; then he and Berry had a sort of wrangle whether they should not have it done between New-cross turnpike and Deptford, just facing the four-mile-stone.

Was there any particular reason to have it done in that place?—Yes, they said there is a reward of twenty pounds, that is given by the inhabitants of East-Greenwich for apprehending highwaymen and footpads: Berry said, Suppose we have Egan joined with us? Then they talked about his being a fence, as they call it; that is, to buy the goods after Salmon had been robbed of them. M'Daniel made an objection to Egan's being in, because he thought five would be too many to be concerned in the reward; Berry said, We cannot cleverly do without him, and if there are five of us concerned, it will be pretty nigh twenty pounds each, if a constable should come in; and they all three, that is, Berry, M'Daniel, and Salmon, concluded that Egan should be concerned as a fence in the robbery; and Berry said he would go and let Egan know of it that night; and said to me, Now, Tom, you may go home about your business, we will

not be seen to walk about the streets together ; so I went away, and left them. The next morning I went out again, to see if I could find anybody for the purpose, but I could not that day ; the next after, which was a Wednesday, Mr. Berry called me into his room, and ordered me to go and tell M'Daniel to come to him to the Bell Inn in Holborn ; I went, and M'Daniel and I went to the Bell together ; there were Egan, Salmon, and Berry ; we were all five together ; they bid me come and sit down, which I did, and drank part of a pot of beer ; then we all concluded that the thing should be done.

What thing was to be done ?—That if I could get a couple to go on the highway, that Salmon should be the person to be robbed ; and Berry and Salmon talked about making two pair of breeches that Salmon was to be robbed of, and to mark them under the pocket or waistband with some particular mark ; to the best of my knowledge it was to be J. S. Then Berry and Salmon said they must have a particular handkerchief too ; then M'Daniel put his hand into his pocket, and pulled out this handkerchief that I have now in my hand ; James Salmon said he had got a handkerchief at home, that he would mark it so as to swear to it, which he was to mark with four oilcloth-holes, one at each corner. Berry said they should want a tobacco-box ; M'Daniel said he had got a very remarkable one, that any one might swear to, which I have fetched forty halfpennyworths of tobacco in for M'Daniel, and I know it to be the same now (taking it in his hand). M'Daniel said he would give it to Salmon to be robbed of ; then they said they wanted a halfpenny, and would have it marked ; M'Daniel said he had got a pocket-piece, which piece I saw his

wife buy for threepence and a halfpennyworth of gin some time before; he said that would do, and it should be marked with a shoemaker's tool, and he gave it to Egan to mark it. Egan said he had got a tool that he used to mark shoes with, that he would mark the piece with; then they bid me go home about my business, which I did. The next morning Berry called me up into his room again, he gave me threepence, and ordered me to go down to the Fleet-market, to see if I could pick up two men or lads there.

Accordingly I went down to the market, and met with Peter Kelly and John Ellis. I knew them before, I knew them to be very bad lads, that is, pickpockets. I gave them some gin, but had no discourse with them that day about the thing. The next day Berry called me into his room again, and gave me threepence more, and bid me go down to the Fleet-market to them, and be sure to have a little talk with them, and told me what to say; and that was to tell them I knew where to get a brave parcel of lullies.

What is the meaning of that?—He meant to get a parcel of linen, if they would go with me to Deptford. I went and met them there, and told them as Berry ordered me; that is, I told them I knew where to get a brave parcel of lullies if they would go to Deptford with me.

Did you tell them Berry told you so?—No, I did not; if I had, they would not have agreed to go. They both agreed to go with me any time I thought proper; then I left them for that day, and bid them a good night.

What were Ellis and Kelly?—Ellis is a chimney-



sweeper, about twenty years of age; and the other about twenty-one, by their looks. The next morning Berry called me into his room again; I came home pretty late overnight, so I had not seen him; he ordered me to go and tell M'Daniel to come to him at the sign of the Plum-tree, in Plum-tree court, Shoe-lane, at the bottom of Holborn-hill; accordingly M'Daniel and I went there; there were Berry and Salmon. Berry told Salmon I had got two men, Ellis and Kelly, and they had agreed to go along with me anywhere, where I thought proper, as I had told him before that morning; Berry bid me drink once, and go about my business. Salmon did not say anything to it then; the reason they chose I should go by myself was, because people should not take notice of me. I went away, and left them three all together.

Did they say so?—They did.—When?—When Berry and he gave me this greatcoat I now have on, to disguise myself.

When was this?—It was on a Friday; I remember it was market-day at Smithfield, and I had been there to Kelly and Ellis. I saw them in the Fleet-market on a pea-cart, betwixt five and six o'clock; I asked them if they would have a glass of gin, and gave them each a glass, and bid them good-bye; about two hours afterwards I met them again in the market, and asked them if they would go to Deptford or not? They said, Yes. Kelly asked me if I had got ever a bag to put the linen in? I said, we did not want a bag; I would tell them more of that another time, and left them then. At night, it being Saturday, Berry called me into his room, and asked me if I had seen them and talked to them? I said I had; he said that was very well. He said, when you get up in the morning,

come into my room before you go out, which was the Sunday morning. I got up, and went in; he then gave me sixpence to treat them with. I went out into the brickfields, and found them, and treated them with some gin and beer; and we agreed to go to Deptford, to steal some linen, and I bid them good-bye for that time; and said to them I would meet them on the morrow morning. I left them in the Spaw-fields, and went to M'Daniel's house, and dined there. I told M'Daniel I had got two lads that I believed would suit for the thing, and told him who they were; and said I would let him know more of it on the morrow, for I should see him again to-night or to-morrow; he said, that was very well. At night I saw Berry, and told him what had passed between the lads and I; he said, it was very well, he would see Egan to-morrow morning; then I went to bed. The next morning, which was Monday, the 22nd of July, about five o'clock, Berry called me into his room again, and bid me tell M'Daniel not to be out of the way, and he also gave me threepence to go down to the Fleet-market to treat Ellis and Kelly with some gin. I went down, and there I met with them, and gave them each a halfpennyworth; and told them I would fix a day when we should go down to Deptford; then I left them, and went to M'Daniel's house. About nine that morning there came Berry and Egan up into his room; Berry said, God damn you, Mack, you and my lord mind nothing but that God damned tea-kettle; you don't mind to look after the business.

What did he mean by my lord?—He meant me; it was a nickname they gave me. M'Daniel answered, He is just come from the two lads, as he tells me.

I said, If Egan has a mind to go, he shall go and see them. He and I went down into the Fleet-market; there were the two lads sitting on a pea-cart. I put my hand into my pocket, and gave them a halfpenny each to go and get some gin. Egan stood not above three or four yards from them at the same time, leaning against a post; then he went one way, and I another; I went through Plum-tree court, and met Egan in Shoe-lane; then he went to M'Daniel's house again. Egan said there to M'Daniel and Berry, By God, they'll do very well, they are two pretty lads.

BERRY—Where was this?—BLEE—You know well enough, it was at M'Daniel's house. Then Berry and Egan and I came downstairs; we parted with Egan at the end of the court. Berry and I went over to the Plum-tree; and as we went by Salmon's door in Shoe-lane, Berry beckoned him out, and he went with us. I stayed and drank part of one pint of beer, and then went away by Berry's order, and left them together. On the Tuesday morning Berry and I went to the Plum-tree alehouse again; he bid me go over and tell M'Daniel he wanted to speak with him. I went and told him, and he came; and then I went out of the house to see if I could find the two lads again. I found them in the Fleet-market, and discoursed with them; they said they were going to work (as they called it) in the Artillery-ground.

What work?—It was picking of pockets. I came back and acquainted Berry and M'Daniel with it. Berry gave me threepence in halfpence, and they bid me go out directly to them, and keep them company; Berry always found the money. They both said they would come into the Artillery-ground about two o'clock to see the lads; the White Regiment marched

that day ; I went and walked up and down with them. About half an hour after two I saw Berry in the Artillery-ground (I was to take no notice of Berry or M'Daniel, or they of me); and presently after, walking round by the Artillery-house, I saw M'Daniel; after that I left the lads and went to Berry, as he stood at the Artillery gate, and said to him, Mr. Berry, do you think they will do?

BERRY—What time of day was that?—BLEE—It was about three o'clock.

What was Berry's answer to that?—He said, Do ! damn me, I have done less than they over, for March and Newman were less ; he put his hand in his pocket and gave me sixpence ; and bid me be sure not to leave them.

I went with the sixpence round the Artillery-ground, and met with M'Daniel ; he said he was going to Berry. I asked him if he thought the two lads would do? He said, Damn your eyes, I have done less than they over at Kingston.

Had he a sight of them?—He had, as we passed him before ; he and Berry went into the ground on purpose to see them. Then I left M'Daniel, and went and gave the boys part of a full pot of beer ; then I bid them good-bye, and told them I would see them again the next morning, which was the 24th. I went home, and got up in the morning, and told Berry I was going to them. He gave me threepence. Then I went down into the Fleet-market, and told them I believed the thing would be done on the Friday ; this was on the Wednesday ; if not, I would let them know further. Then I left them, and at night I went home, and told Berry I had been again along with Ellis and Kelly. He said, Damn you,

don't go to deceive us; do you come up to the Bell in Holborn by-and-by and tell M'Daniel I want him. I went to M'Daniel's house, and left word what Berry ordered me, for M'Daniel was not at home. Then I went to the Bell, and Berry met me just at the door. Just as I was going into the house he said, Here is threepence, go away to the Artillery-ground; be sure to be there about two o'clock. This was on Thursday the 25th, in the morning. He said, Don't come in, for Mr. Bagley is there; I don't desire he should see you.

Who was that Mr. Bagley?—He was a neighbour of Berry's. I went away to the Artillery-ground at that time, and walked about an hour and a half before I saw either Berry or M'Daniel, but walking by the Artillery-ground I saw M'Daniel; he told me he had been at dinner along with somebody in the Artillery-house, and said, Where the devil is Berry? I said I never saw anything of him. About half an hour after that there was hue-and-cry after a pick-pocket. M'Daniel came to me and said, God damn me, the chief person is a-ducking in the Pyed-Horse yard; follow him and give him some gin, for they have almost killed him. I followed him (it was Ellis, the chimney-sweeper, the biggest of the two lads) cross Moorfields. I saw the people go from him, and there were but two or three people behind him; I gave him a penny or three halfpence, I do not know which. Then I went back to M'Daniel, and told him he was very safe; then he and I came out of the Artillery-ground together. As we were coming out of the ground, we met one they call Plump (his name Brebrook) and another fellow they call Doctor, that was turnkey at Clerkenwell Bridewell. Plump, seeing

M'Daniel and me together, said to me, God damn you, you rascal, you deserve to be hanged for that affair of Kidden. M'Daniel said to me, Come along, don't be afraid of anybody. We went over Moorfields together. He ordered me to go to his wife, which I did; and after that I went down the Fleet-market to see if Ellis was safe. I found them both, and told them I would meet them the next morning; they said they had no money to pay their lodging; I said, Here is three halfpence for you, go and lie in the brickfields to-night. Then I went home to Mr. Berry's. He told me he had been at the other end of the town about some business, and he could not come into the Artillery-ground. If this affair of Ellis's being ducked had not happened, the robbery of Salmon was to have been committed on the Friday.

When was it fixed to be on the Friday?—That was determined to be on the Wednesday.

By who?—Berry and I pitched upon the thing in the morning, and he was to go and let the rest know.

Where did you consult this?—We did it in his room, before we went out to go to the Bell.

What did he say to you about it then?—He bade me tell the lads we should go to Deptford to steal the linen on the Friday.

Who did he mean by the rest, which he said he would let know it?—He meant Egan, Salmon, and M'Daniel. On the Thursday night I told Berry of Ellis's being ducked; he said M'Daniel, Egan, Salmon and he had agreed that it should not be done on the Friday, lest the lads should be apprehended on the Saturday, and kept all Sunday in the watch-house; and somebody might come to them, to whom they

might tell something about my being concerned with them, and so by impeaching me I might be apprehended; so he said they had fixed it to be on the Monday. On which morning I got up by Mr. Berry's orders; he gave me twopence or threepence to go to the Fleet-market to meet them, and bid them stay till nine o'clock, and say I would come to them again; which I did, and returned, as Berry ordered me, to him at the Plum-tree alehouse. There was Salmon and he; he sent me out for M'Daniel; I went to him, and he bid me tell Berry he was shaving himself, and he would come when he had done. I went and told Berry. He changed a guinea, and gave me five shillings, and bid me not to be extravagant. He gave me that, as he said, to flash the boys; to show it to them, and say, I made that last night. I was to pull it out all at once. He gave Salmon half-a-crown to be robbed of.

Was it in one piece?—No; it was two shillings and sixpence.

Who were present at the time?—There were Berry, M'Daniel, and Salmon. Then Berry said to me, Now go away as fast as you can; and I said, At what place shall I stop for you, to see you are going, that we may be both sure? I said, I will stop at the Bell in the Borough, and call for a glass of gin; then you may know and be sure that we are going to Deptford. I left them, and went to the two boys. It was about half an hour after nine in the morning. I went with the boys to a house in Little Britain; there I called for some beer, and bread and cheese; and pulled off my coat, and said I must go to the Fence to get some money, for the woman has not paid me all. Then I left my greatcoat, and went to Berry; and told

him to hasten away, for the boys wanted to go. Berry bid me return to them directly, and said he would be over the water time enough for us. I went to the house again, and called for another pot of beer, to delay the time. After we had drunk that, we went out to go to Deptford. When we came to the Bell in the Borough we went in; and in the right-hand box, there sat Berry and Salmon. There I gave the boys each of them a halfpennyworth of gin; I was not to take notice of Berry or Salmon. After we came out, Kelly said, Damn your eyes, there is that old thief-catching son of a bitch, your old master. Said I, Never mind it, I don't belong to him now. Then we went down the Borough market; they bought a breast of lamb for their dinners, and we went to the Black Spread Eagle in Kent-street (which was the house the prisoners and I had appointed for them to come to the next day). We had the lamb fried for our dinners; from thence we went to Deptford.

What time did you set out from Kent-street? We set out from thence about half an hour after twelve o'clock; I had made them almost drunk. After we went from thence it was too soon in the day; we could do nothing till it was dark, I told them, so we would go over into the fields and go to sleep; so, to prolong the time, we went into the fields, and all three of us went to sleep; they slept pretty heartily. When I thought it proper time to awaken them, I did; and away we went for Deptford.

What time did you set out after this sleep?—I cannot tell the time.

Was it dark?—No, it was not. We were in Deptford an hour before dark. I went with them to the



sign of the Ship, the house that Berry and Salmon had appointed to come to. I called for a pint of beer at the door, and bid them stay there and said, I had a relation in the town, near the Water Gate, which I wanted to see; I left them, and went to see for Berry and Salmon. I found Berry; he and I went into a public-house, I think it is the Duke William's Head; he called for a pint of beer, and bid me return to the two boys, and Salmon should come to the house. I went to them (they were still at the door); I said, Come, let us go into the house; I expect my cousin to come to me.

Had you let the boys into any knowledge of this affair before you came to this place?—No, I did not; only I had told them it was to steal some linen; they went for no other intent. Then I went in and called for a pot of beer, and bread and cheese; we ate the bread and cheese, and drank the beer, and called for another pot of beer; in the meantime, in came Salmon. He first went and leaned against a dresser for about half a minute, and then came and sat down in the box near us, and began to discourse about going to London (it was then dusk). I saw Berry go by the window; he beckoned his finger, and I went out to him. He said, Be sure to follow Salmon when he comes out. I went in again, and Salmon presently went out. I changed half-a-crown, and asked the lads if they would have any gin. When Salmon first came in, Kelly said, There is that old blood of a bitch, the breeches-maker in Shoe-lane; his son and I have been picking of pockets many a time. I said, Never mind that; what is that to us? I knew the place where he was to stop at; it was just by the four-mile-stone; this was agreed upon before. The two boys

and I went on ; and by the four-mile-stone, by a gate, Salmon stood, making believe he was making water. Damn me, said Kelly, There is the old breeches-maker ; he is suckey, let's scamp him,

What reason did you give Kelly and Ellis for your going after Salmon?—I said we will take a walk till it is time to steal the linen.

Was it light or dark?—The moon shone. Kelly said, when he came up to Salmon, God damn you, what have you got there? Salmon said, Gentlemen, take what I have got, don't use me ill. He had the breeches under his arm, and he gave them to me ; they were in a blue-and-white handkerchief, and I gave them to Kelly. I said to Salmon, What money have you got? Salmon said, Here, gentlemen, what money I have got is in my left-hand waistcoat-pocket, in a tobacco-box. (He had told me before what money he had got would be there.) Kelly put his hand in his pocket and took the tobacco-box out, and a clasp-knife and fork ; then away we walked for London, and came into Kent-street as fast as we could, and lodged there all night at a house where I paid the lodging-money at going down, by Berry's order, to induce the lads to come there again.

What time did you go to Kent-street after the robbery?—I believe we got there about eleven o'clock ; the people had no clock in the house.

What money did you take from Salmon?—We looked at that coming along ; I knew what it was before ; there were two shillings and sixpence, and a pocket-piece with Skilion on it, or some such name, and a punched mark in the middle of it. (Mr. Cox produced the things mentioned.)

Court—Look at this tobacco-box.—BLEE—This is

the very same, it is riveted within-side ; I have had this box a hundred times in my hand before.

*N. B.*—The box was an oval iron box with a rose, and a garter round that, and a lion and a unicorn (as on the king's arms) in basso-relievo on the lid.

*Blee* then identified the pocket-piece, the breeches, the handkerchief, and the knife.

What was done the next morning, when you lay in Kent-street?—We got up the next morning about seven o'clock, and went over the way to the sign of the Black Spread Eagle (the house that Berry ordered me to go to). I called for some beer, and said to Kelly and Ellis, Sit down, and I will go get you something for breakfast. I went out with that pretence, and went to the White Bear in the same street, where Berry ordered me to come and let him know. There sat Berry, Egan, and Salmon, at the door on the bench. Berry said, That son-of-a-whore M'Daniel is not come yet, now we must wait for him ; go you back, and Egan shall come after you directly. Egan and I walked up the street a little way together. I said, Stop a bit, while I go over to that shop to buy a lamb's liver for breakfast ; he said he would go on. He went on before, and called for a pint of beer ; I came after with the liver. I said to Ellis and Kelly, as I was going to cut the liver, That man deals in Rag-fair (meaning Egan) ; at the same time I knew he did not ; but I was to say so when he came in. I said maybe he will buy the breeches ; shall I ask him ? Yes, said they, with all our hearts. I said to him, Master, will you buy some leather breeches ? He said, Let me look at them ; if you and I can agree,

I will buy them. After he had looked at them, he said, What will you have for them? I said, six shillings. He said, I will give you five. He put his hand into his pocket, and gave Kelly a shilling earnest; and said he had not so much money about him, but he would come in an hour or two, and pay the rest of the money; and he would leave the breeches in our care till he came back. I said, My friend, will you eat a bit of liver and bacon before you go? He said, I don't care if I do. He sat down by the fireside, and said, Landlord, let us have a half-pennyworth of tobacco; and said, God bless me, I don't know what I shall do; I have lost my tobacco-box. (This he said to get the tobacco-box of them.) I said to Kelly, Let us sell him the box, maybe he will buy it. Kelly said, No, let us ding it; it is such a remarkable one, maybe it may be known.

What did he mean by dinging it?—He meant to fling it away. I said, No, let us sell it; then Kelly said, Master, I will sell you a tobacco-box, if you will buy it; said he, Let me look at it; he looked at it, and asked what he would have for it? Kelly asked sixpence for it; he said, No, he would not give it. I said, We will not have dry money, we will have some beer; then Egan said, He would give a full pot of twopenny for it; then Kelly said, he should have it. After he had eat his breakfast, he went out, and goes to Berry and Salmon. I went backwards with the two boys to play at skittles to detain them, but the ground was so wet we could not play; so we found another pastime called The Devil and Taylors. I kept them there an hour and a half; then I said, If the man does not come, let us sell the breeches. I said, I will go and be shaved; and I left my great-

coat, and went to the White Bear ; but when they came there they did not like the people or the house, because when M'Daniel came they did not like him. I went out of the house, and saw Berry come out of the Elephant and Castle ; they beckoned me over ; I went and called for a pint of beer ; Berry said to me, You may drink with us ; and said, Damn you, where is your greatcoat ? He bid me turn back and fetch it, and said, M'Daniel and Egan shall go.

Who were there ?—There were all the four prisoners there, sitting in the box going in on the left-hand side, drinking ; I went back again to Ellis and Kelly and said, The barber is busy, and cannot shave me, I must come again in five or six minutes. I said, The weather is cold, I must put my great-coat on ; I put it on, and went to the Elephant and Castle to them again. Berry bid me go to the Bell in the Borough, and stay there till he came, and to get shaved. I went away ; and as I was going, Egan and M'Daniel went out ; I got shaved, and went to the Bell in the Borough, and called for a pint of beer and drank it. About an hour after Berry came in, and we had another pint ; then he and I went homewards together ; we went as far as Ludgate Hill, there we saw one Mr. Rogers coming along ; so he said, Leave me, don't be seen with me ; and I left him. At night, when Berry came home, I said to him, Master, be so good as to lend me some money to go to the fair to-morrow. He said, That is right, Uxbridge Fair is to-morrow, the 31st ; he lent me eighteenpence, saying, it was to go to Billingsgate to buy shrimps with ; I went to the fair, and came back again on the 1st of August. Berry bid me not be afraid ; saying, he would always keep a good look-out ; and they always

said, if I was taken up, Salmon should never appear against me.

You say you went to the White Bear in the expectation of seeing the prisoners, and after that to the Elephant and Castle; when you came there, what did you see?—I saw Mr. Berry, Salmon, and Egan; M'Daniel was down in the yard at my first going in, but he came in before I went away.

Recollect yourself whether you saw them eat or drink?—I drank part with them, but I had breakfasted before I got there; I know Berry told me they had a rasher of bacon, and he said I had had a better breakfast than they. This was at the Bell in the Borough. I was not at the trial of Kelly and Ellis in Kent. I was taken up the Friday before, being the eighth day of the month. The robbery was committed on the 29th of July.

*Cross-examined*—Blee said that the conversations he had had with Kelly and Ellis before the robbery were about stealing linen, and no mention was made of robbery on the highway. He had not proposed to commit a robbery on Salmon before Kelly accidentally pitched on him, and said, There is the old breeches-maker let us scamp him.

M'DANIEL.—Ask him if he has not had a quarrel with me, and swore he would be revenged on me.—

BLEE.—No, never; M'Daniel once got a long knife, and threatened to cut my throat.

BERRY.—Because I took his brother that was transported, he always swore he would be revenged of me.—

BLEE.—I never swore so; he did not take him.

*George Holenright* said M'Daniel had lodged in his house from Ash Wednesday for about four months, till the time that he was taken up at Maidstone. He saw Blee a great deal about his house before the time M'Daniel went down to Maidstone; he was a kind of handy man between M'Daniel, Berry, and Salmon, and a very willing fellow. He saw Blee on the Artillery-ground running backwards and forwards, on a Tuesday; he does not know in what month; but it was when the White Regiment marched. I said, Tom, What are you at? He said, Hold your tongue, hold your tongue. He did not see either of the other prisoners there as he can remember.

Did M'Daniel tell you he was going down to the Maidstone Assizes?—No, he never mentioned a word to me of that; he said he had taken a man in Smithfield for a murder, and he expected to have the reward; and said he should go to Coventry one day or another. I have seen M'Daniel and Berry together, especially; Salmon I have seen the least; I never saw Egan to my knowledge. I have seen Blee with all three of them; he was a sort of runner to them as I thought. They very often appeared as of one company; and if anything was to be done, Blee used to run backwards and forwards; and there was whispering together, but it was nothing to me.

*James Kirby* had seen Berry and M'Daniel drinking at the Two Brewers, and M'Daniel and Salmon drinking at the Union Arms in the same

week; they were very busy in discourse. Blee came into the Union Arms as Salmon went out. He saw M'Daniel, Berry, and Blee smoking at the Union Arms about the same time in a trifle after; they were very well acquainted. Blee appeared to be M'Daniel's man; he several times came to the Union Arms to fetch beer for him. Blee's beard was very long most of the time witness knew him.

*James Price* knew Berry, who lived in the yard where he lives now. M'Daniel was frequently with him; he has seen Egan with him there. Salmon once came into the yard and asked for Berry. The witness once had a warrant against Blee and young Berry; Berry kept Blee from him in his house. He has often seen M'Daniel and Berry together, a hundred times or more; you would seldom see one without the other.

*John Samms* knew all the prisoners and Blee. He has seen Berry, M'Daniel, and Egan together at the George on Saffron Hill for these two years past. Berry had a stable opposite the witness's; Egan and M'Daniel have come many a time to ask him whether he had seen Berry. Blee lodged with Berry; my lord (that is Blee) always went upstairs; and when Berry turned his wife out, Blee used to lie there. He identified the tobacco-box, and swore he had seen it in M'Daniel's possession.

*John Brayder* identified the pocket-piece. He



remembered the word shilling on it; but not the mark stated by Blee to have been made by him and Salmon. He sold it to a woman who came with Blee; and whom Blee stated to have been M'Daniel's wife, or company-keeper; he sold it at the Blue Posts in Holborn; he cannot say when, but believes it was in the cherry season.

*Joseph Cox*, recalled, deposed that he was the chief constable of the lower half-hundred of Blackheath. He received information about the beginning of August of the robbery of a breeches-maker in the parish of Deptford by three footpads, that two of them had been taken by M'Daniel and others, and sent to Maidstone Gaol, and that the third was Thomas Blee, who kept company with M'Daniel. On the 9th he arrested Blee, who at once offered to make a confession. He accordingly made a sworn statement before a magistrate which was produced by Cox, and tells in outline the story already deposed to by Blee, adding only that M'Daniel and Egan had arrested Ellis and Kelly immediately after he left them, with all the stolen goods, except the tobacco-box, upon them. As soon as this was taken, Cox obtained warrants for the arrest of the four present prisoners, and on the 15th of August attended the trial of Ellis and Kelly, with Blee secretly in his custody. Salmon, Egan, and M'Daniel

all gave evidence; telling their different parts of the story as had been arranged, and as though the robbery had been a genuine one on both sides. The only additions to the plot as revealed by Blec were that Salmon swore that violence had been used to him, and that he had been threatened with a knife; and that Egan represented that he had recognised the breeches as the property that he knew Salmon to have been robbed of, and went out to look for an officer and met M'Daniel by accident. M'Daniel confined himself to an account of his effecting the arrest as an officer on Egan's information. While the other prisoners were giving evidence, Cox asked Berry, who was sitting in the Nisi Prius Court, to drink with him, and

'as we were going along to the Bell to drink a glass of wine, he asked me what I thought would be the fate of Ellis and Kelly, and who was to pay the expence of the prosecution, for it was very considerable. Upon that I could not help observing, that if they were convicted, there would be sufficient to pay the expence very handsomely; and if they were acquitted, the prosecutors, I said, I believed must bear the expence themselves; he said he knew that, and for that reason, if this affair was well over, he never would be concerned again.'

When they got to the Bell Cox arrested Berry, and afterwards, the other prisoners having been ordered to leave the court after they had given

their evidence, they were arrested too. They were all confronted with Blee, and denied that they knew him. Berry and M'Daniel both offered to give evidence; the former being very anxious that the latter should not be allowed to do so 'because he had saved himself once before by the same means.' M'Daniel asked to see Cox alone the next day when he

cried a good deal, and begged of me to be his friend, and get him committed for further examination; for he said he could make a very great discovery relating to the public, and could put £500 into my pocket. I told him I would acquaint the gentlemen with what he said. Accordingly I did, and used my endeavour to prevent his being committed for further examination; he was afterwards committed upon the warrant.

*Elizabeth Pragnell*, who kept the Ship, corroborated Blee's evidence as to what took place there, and added that she identified the two boys when they were brought back the next day by M'Daniel, the constable, and Cornack, the drummer.

*James Cornack*, a drummer, saw Blee, Kelly, and Ellis in the Black Spread Eagle on the morning of the 30th of July. Blee said he wanted to get shaved and went out, and ten minutes afterwards M'Daniel came in and arrested the two boys. Cornack asked him what he was doing, and M'Daniel answered that he was an officer and was arresting them

for a robbery, and called Cornack to assist him. He took a piece of rope out of his pocket and tied them together. He sent Cornack to the Elephant and Castle to fetch two men whom he would find there. He found Salmon and fetched him. On the way Salmon told him that he had been robbed of a guinea, half-a-crown, a tobacco-box, and two pairs of breeches tied up in a handkerchief, and described the marks on them. At the Black Eagle they found Egan sitting on a box opposite the lads with a bundle on the table. M'Daniel asked him what he had in the bundle in that handkerchief? He said it was no business of his, for he had bought the handkerchief and the things in it of the lads. Cornack made him open the handkerchief, and found the marks on it which Salmon had described, and it contained the breeches. M'Daniel searched Kelly and took a clasp-knife and a pocket-piece out of his pocket. He showed Cornack the pocket-piece, and desired him not to be mealy-mouthed when he came before the justice; this he said once or twice. Cornack did not see the tobacco-box. Going along, M'Daniel said to the lads, You have made a good hand of it if you have spent the guinea already; the lads said they never took a guinea from Salmon.

M'Daniel said to me, One of them has got the money in his stocking, but let them keep it, poor things, they'll want it; he wanted them sadly to confess the

robbery, and told them, if they would not, they would certainly be hanged.

What were his words as near as you can recollect? —He said, You dogs, I would have you confess when you come before the justice, it will be the better for you; and tell me where the other fellow is gone to; they said they could not tell anything about it, and they would give him no answer.

They were taken to the Ship and identified by the landlady. M'Daniel told Cornack to come to his house in Union Court; he went there, but could not hear of him; he looked for him, but did not find him; he saw him once, but that was by mere chance; 'he was then dodging me, or somebody else, at the end of Parliament-street.' Cornack was at the Maidstone Assizes, but could not find any of the prisoners; they kept out of his sight, he imagined, for fear he should come in for part of the reward. At last he saw Egan and watched him; he went with him and some of the others into the clerk's office to get the bill of indictment drawn. When they came in the clerk said, Are you all here? Yes, said M'Daniel, we are all here. Said the clerk, There are six of you. There are but five of us, said M'Daniel. Said the clerk, Is there not the drummer? Oh! said M'Daniel, I had forgot him.

*Thomas Sargent* deposed that a tobacco-box like the one produced had often been sent to his house to be filled, by M'Daniel.

*Henry Sergeant*, a constable, knew the prisoners very well; he was at the taking of them all at Maidstone Assizes.

COURT—Give an account what you know of them.—  
SERGANT—M'Daniel said I was a young constable, and I should have my share of the reward; he should take the money, and he would see me paid.

What reward did he mean?—The subscription-money of our parish, for the two lads that were tried, John Ellis and Peter Kelly. I carried them down.

What passed when he said, You are a young constable?—The prisoner Berry said, We shall have a good supper if the prisoners are convicted; and if they were not, he thought he must beg his way home. As I was going along the road with Ellis and Kelly to Maidstone, they told me there was one Tom Blee concerned with them in the robbery; and also where he lived, and what sort of clothes he wore. I took it down in writing; the justice desired me to go and take him; I said I would give directions to a thief-catcher, which I did to Ralph Mitchel; but he refused to act in it.

Sergeant was at the trial; Salmon, Egan, and M'Daniel were all witnesses. Berry did not concern himself in the trial, his name was not on the back of the bill; 'he had no business there if he could have trusted his friends with the money.'

The prisoners were then called on to defend themselves.

*Berry* denied the interviews that *Blee* said he had had with him; he accused *Blee* of stealing some of his goods on the 5th of August; and hearing on the 12th that he was taken up at Greenwich, he went there with M'Daniel to charge him with the theft. He could not find out whether *Blee* was in custody.

I asked Mr. Sergeant if he had got him? He would not tell me. They never took him to give any evidence before the justice. People may go a-thieving for ever, if they may get off in this fashion.

M'Daniel said that on the 30th of July he met *Egan* by accident, and was asked by him to come to the Black Spread Eagle to arrest two men whom he suspected of theft. He accordingly went there with *Egan* and *Salmon*, and found *Ellis* and *Kelly* sitting on the breeches. He took them to a justice, when one of them wanted to be admitted an evidence, but was not allowed. The prisoners told him of 'my lord's' being concerned in the robbery; and when he heard of his arrest, he went to the justice, who told him it could not have occurred, as *Blee* would have been brought before him. M'Daniel went to Maidstone, where he could not give any evidence as to the robbery.

'As God Almighty is in heaven, I know no more of them than your lordship there; I have taken a great many thieves, and have ventured my life, and

been shot at by them. I never had my name brought in question; I have been offered money to let prisoners go, but I never would do it; I could have had threescore pounds to have done it.'

*Salmon* said he had never been in *Blee's* company, and had not been in the *Bell* for five years.

*Egan* did not know either the *Bell* or *Blee*.

*Berry* called *Price*, who had known him for five years.

COURT—He calls upon you for a character. What character can you give him?—PRICE—A very bad one, my lord. BERRY—Please to ask him what he can say as a stain upon my character?—PRICE—It will hurt you if you insist upon it.

*M'Daniel* called *George Holewright* to speak to his character.

G. HOLEWRIGHT—I believe I have known *M'Daniel* eight or nine years, or longer; he never did me an injury in his lifetime; but as for the rest of it, I believe he is bad enough.

*Salmon* and *Egan* called no witnesses.

The jury found all the prisoners guilty of the facts charged against them, but whether the facts constituted the offence charged against them, they knew not; and therefore they found a special verdict on the facts as related by *Blee*.



The case was argued on the 19th of July and the 28th of July at Serjeant's Inn Hall before all the judges. Counsel appeared on both sides and discussed all the law bearing on the subject, including the stories of Tarquin cutting off the heads of the tallest poppies, as told by Livy (*lib. i., c. 2*), and of Phrasibulus and Periander of Corinth, as related in Herodotus and Aristotle. Eventually Foster J.<sup>1</sup> pronounced judgment in December, deciding that if a robbery had taken place, Salmon was not accessory to it (they seem to have considered that he was not a party to the agreement at the Bell), and that all the others were; but that in fact no robbery had taken place, because Salmon had not been deprived of his goods against his will. The prisoners were therefore discharged of the present indictment; but the next February were tried for and convicted of a conspiracy, and were condemned to be imprisoned for seven years and to be set twice in the pillory, and to find sureties for three years.

M'Daniel and Berry stood on the pillory near Hatton Garden on the 5th of March 1756:

'And were so severely handled by the populace, that it was with the utmost difficulty that one of the sheriffs, and the keeper of Newgate, who stood in a balcony just by, prevented their being utterly

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<sup>1</sup> See vol. ii. p. 232.

destroyed ; and so great was the mob that the peace-officers found it impossible to protect the prisoners from their fury.'

Egan and Salmon stood in Smithfield on the 8th.

'They were instantly assaulted with showers of oyster-shells, stones, etc., and had not stood above half an hour, before Egan was struck dead ; and Salmon so dangerously wounded in the head, that it was thought impossible he could recover. Whatever punishment they might deserve from the law, it is certain they ought not to be killed through the rage of the populace. And we find, that April 11, 1732, Edward Dalton and Richard Griffiths were tried at the Old Bailey for the murder of John Waller in the pillory, by pelting him with cauliflower stalks, etc., and found guilty, and both executed at Tyburn.'

In June 1756 M<sup>c</sup>Daniel, Berry, and one Mary Jones were tried for the murder of Joshua Kidden<sup>1</sup> in causing him to be tried, convicted, and executed, knowing him to be innocent of the fact laid to his charge, with intent to share the reward, on the 4th of February 1754. They were convicted and sentenced to death ; but judgment was arrested in order that the point of law, whether their act amounted to murder, might be considered, and they were eventually discharged of that indictment. Berry died in

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<sup>1</sup> See p. 163.

Newgate in 1762; the next year M'Daniel procured himself to be sent abroad for life to the Indies as a soldier. Salmon seems to have died in Newgate.

The report is silent as to the ultimate fate of Ellis and Kelly.

WILLIAM BARNARD, 1758

## WILLIAM BARNARD, 1758

(19, *STATE TRIALS*, p. 815)

WILLIAM BARNARD was indicted before Sir Michael Foster,<sup>1</sup> one of the Justices of the King's Bench; Sir Sidney Stafford Smythe,<sup>2</sup> one of the Barons of the Exchequer; Sir William Moreton, the Recorder, and others, at the Old Bailey, on the 10th of May 1758, 'for that he being an evil-disposed person, and seeking wicked gain and little regarding the laws and statutes of this kingdom—on the 31st of

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<sup>1</sup> See vol. ii. p. 232.

<sup>2</sup> Sir Sidney Stafford Smythe was born, apparently of a well-known Kentish family, in 1705. He was educated at St. John's College, Cambridge, and called to the bar in 1728. He joined the Home Circuit, and was made Steward of the Palace Court in 1740. In 1747 he became King's Counsel and a Bencher of the Inner Temple. In the same year he was elected member for East Grinstead. He became Baron of the Exchequer in 1750, and tried Margaret Blandy for poisoning her father (18, *State Trials*, 1069) in 1752. He became Lord Chief Baron in 1772, retired in 1777, and died in 1778. He took great interest in the Evangelical movement, and is said to have declined the Lord Chancellorship, and to have been the ugliest man of his day.

December 1758, with force and arms—did send a certain letter in writing, with a fictitious name, to wit, with the fictitious name of Felton, thereto signed and subscribed, to the most noble Charles, duke of Marlborough,<sup>1</sup> demanding a certain valuable thing, to wit, a genteel support for the life of him, the said William Barnard, etc., etc.’

*Mr. Moore* opened the indictment, after which *Mr. Serjeant Davy* opened the case. He explained that it was brought under the so-

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<sup>1</sup> Charles Spencer, third Duke of Marlborough and fifth Earl of Sunderland, was born in 1706; he was grandson of the great Duke, and succeeded his maternal aunt, who was Duchess in her own right, in 1733. Under her influence he went into opposition to the Court, becoming a member of the Liberty Club in 1734, and appearing as a leading supporter of the Prince of Wales at a later date. In 1738, however, he unexpectedly joined the Court party, and speedily obtained military promotion. He commanded a brigade at Dettingen (1743); but immediately afterwards resigned his commission in disgust at the conduct of the Hanoverians. In 1745, however, he was among the first to raise a regiment in support of the Government, and was made a lieutenant-general. In 1749 he became Lord Steward of the Household and a Privy Councillor; in 1755 he was appointed Lord Privy Seal and Master-General of the Ordnance. In May 1758 he was made the nominal commander of an expedition to St. Malo; but seems to have acted under the advice of Lord G. Sackville. The expedition was a failure, but apparently no discredit attached to the Duke. He was sent in the same year in command of an English contingent to aid Prince Ferdinand in Germany. He joined the prince in Westphalia in July, but died suddenly at Munster in October.

called Black Act, which made it a felony punishable with death, to 'send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, or venison, or other valuable thing.' The prisoner was charged with having written one letter, but he had in fact written three, the second and third being written in consequence of the first, and being explanatory of the writer's intentions.

The first letter was dated the 29th of November, and was found on that day under the door of the Ordnance Office, addressed to the duke of Marlborough. It was written in imitation of print, and ran as follows :—

'To his grace the duke of Marlborough.

'xxviii November.

'My lord ; as ceremony is an idle thing upon most occasions, more especially to persons in my state of mind, I shall proceed immediately to acquaint you with the motive and end of addressing this epistle to you, which is equally interesting to us both. You are to know then, that my present situation in life is such, that I should prefer annihilation to a continuance in it ; desperate diseases require desperate remedies ; and you are the man I have pitched upon, either to make me, or to unmake yourself. As I never had the honour to live among the great, the tenor of my proposals will not be very courtly ; but let that be an argument to enforce the belief of what I am now going to write. It has employed my inven-

tion for some time to find out a method to destroy another, without exposing my own life ; that I have accomplished, and defy the law. Now for the application of it. I am desperate, and must be provided for ; you have it in your power, it is my business to make it your inclination to serve me ; which you must determine to comply with, by procuring me a genteel support for my life ; or your own will be at a period before this session of Parliament is over. I have more motives than one for singling you out at first upon this occasion ; and I give you this fair warning, because the means I shall make use of are too fatal to be eluded by the power of physic. If you think this of any consequence, you will not fail to meet the author on Sunday next, at ten in the morning, or on Monday, if the weather should be rainy on Sunday, near the first tree beyond the stile in Hyde-park, in the foot-walk to Kensington ; secrecy and compliance may preserve you from a double danger of this sort ; as there is a certain part of the world where your death has more than been wished for, upon other motives. I know the world too well to trust this secret in any breast but my own. A few days determine me your friend or enemy.

‘FELTON.

‘You will apprehend that I mean you should be alone ; and depend upon it, that a discovery of any artifice in this affair will be fatal to you ; my safety is assured by my silence ; for confession only can condemn me.’

The duke went alone to the spot, at the time appointed, though he had an attendant at



some distance to observe what passed. He was 'as much undressed as a man of his quality is'; and he had his pistols before him, but observed nobody at the appointed place. After waiting some time he was just returning, when he observed a person come to the named tree holding his handkerchief to his mouth in a seeming disconsolate manner, who looked at the water, and stood still a very considerable time. The duke had no doubt in his mind but that this must be the writer of the letter, and rode up to him, and telling him who he was, asked if he had anything to say to him. The man replied that he had not, and the duke rode away.

A few days afterwards the duke received a second letter in the same way as the first, written in the same imitation print; but the direction of the second letter, like that of the first, was not so written. The letter was as follows:—

'To his grace the duke of Marlborough.

'My lord, You receive this as an acknowledgement of your punctuality as to the time and place of meeting on Sunday last, though it was owing to you that it answered no purpose. The pageantry of being armed, and the ensign of your order, were useless, and too conspicuous; you needed no attendant; the place was not calculated for mischief, nor was any intended. If you walk in the west isle of Westminster Abbey, towards eleven o'clock on Sunday

next, your sagacity will point out the person, whom you will address by asking him to take a turn or two with you. You will not fail on inquiry, to be acquainted with the name and place of abode; according to which directions you will please to send two or three hundred pound bank-notes the next day by the penny post. Exert not your curiosity too early; it is in your power to make me grateful on certain terms. I have friends who are faithful, but they do not bark before they bite.—I am, etc., etc.

‘F.’

It was obvious that the writer of this letter was aware of the circumstances of the duke's visit to Hyde Park; and the duke was therefore convinced that he was the person he had seen there. The writer knew of the duke's punctuality, and of the arms and dress he had on; and he assigned that as his reason for not speaking to him; though the only ‘ensign of his order’ that he had on was a star, ‘and that perhaps an old one, so as not to be conspicuous.’ The duke went to Westminster Abbey, and as there was some difficulty in knowing which the west isle of the Abbey might be, he stood near the west end. There he saw the same man he had seen in Hyde Park come in with another man who seemed by his appearance to be ‘a substantial tradesman, a good sort of man.’ After they had stopped and looked at the monuments at the west gate of the Abbey, the duke went and stood by the man he had seen before, to see

if he would speak to him. Neither took any notice of him, but they walked away towards the choir; the stranger went in, and the other man came back to the duke.

The duke then asked him, 'Sir, have you anything to say to me?' 'No, my lord.' 'Have you nothing at all to say to me?' 'No.' The duke then walked a little on the other side of the isle, and saw the man look eagerly at him; but the duke did not speak to him. The duke then left the Abbey by the west door to go to his coach, accompanied by an attendant he had with him to apprehend the unknown man if necessary; and this attendant the unknown man saw hiding in a corner to watch the duke on the way to his coach; but he did not see that he himself was being watched by another man, who was also in attendance on the duke.

A few days after this the duke received a third letter at his house; and this letter counsel proceeded to read, adding his own running comments. It was as follows:—

'My lord, I am fully convinced you had a companion on Sunday.' So far it is proved that the writer of these letters was in the Park on the first Sunday, and saw the duke there; and was in the Abbey on the second Sunday, and saw the duke there; and that it was the same man that the duke saw at both these times.--'I interpret it as owing to the weakness of human nature; but such proceeding is

far from being ingenious, and may produce bad effects, whilst it is impossible to answer the end proposed.'—Guarded through all. 'You will easily see me again soon, as it were by accident, and may easily find where I go to; in consequence of which, by being sent to, I shall wait on your grace, but expect to be quite alone, and converse in whispers. You will likewise give your honour, upon meeting, that no part of the conversation shall transpire.'—So that you see, as he was guarded before, he was determined to make it impossible to be discovered.—'These and the former terms complied with, insure your safety; my revenge, in case of non-compliance (or any scheme to expose me), will be slower, but not less sure, and strong suspicion the utmost that can ensue upon it.'—You see how artful he had contrived it; he was determined that nothing more than strong suspicion should ever be in evidence against him.—'While the chances will be tenfold against you. You will possibly be in doubt after the meeting, but it is quite necessary the outside should be a mask of the in. The family of the BLOODS is not extinct, though they are not in my scheme';—the word BLOODS is in capital letters. That is a dreadful name! As Felton was the villain who assassinated the duke of Buckingham, so this is the name of the fellow who seized the duke of Ormond, and was going to carry him to Tyburn to execute him, and also who stole the crown out of the Tower of London.

This third letter was received in the second week in December; and after it the duke heard nothing more till about the 14th of April, when he received a letter as follows:—

‘To his grace the duke of Marlborough.

‘May it please your grace ; I have reason to believe that the son of one Barnard, a surveyor in Abingdon-buildings, Westminster, is acquainted with some secrets that nearly concern your safety ; his father is now out of town, which will give you an opportunity of questioning him more privately. It would be useless to your grace, as well as dangerous to me, to appear more publicly in this affair.—Your sincere friend,

‘ANONYMOUS.

‘He frequently goes to Storey’s-gate coffee-house.’

On receipt of this letter the duke sent for the man indicated who proved to be the prisoner, and the man the duke had seen and spoken to on the previous occasions. The duke, without giving him any assurance of secrecy, asked him if he wished to speak to him, which he said he did not. The duke then pointed out to him that it was very odd that the last letter mentioned some circumstances as to the time and the place where Barnard was to be found, as to his father’s being out of town and the like. The prisoner immediately said, ‘My lord, my father was out of town at that time,’ on which the duke taxed him with knowing when the letter was written, and with being the writer of the other three letters. Afterwards, when the duke dwelt on the writer of the second letter being surprised at seeing him

armed, the prisoner answered, 'Indeed, I was surprised to see your grace armed.' The duke was determined, though he had not given him any pledge of safety, not to so far invade the laws of hospitality as to have him arrested in his own house; but pointed out to him that if he had not written the letters, it nearly concerned him to find out who did write them. 'Instead of giving any assurance to endeavour to do this, however, what was his behaviour? A smile of contempt, an unmannerly laugh in the duke's face, as if it did not concern him at all.'

After pointing out in a few words the strength of the inferences to be drawn from the foregoing circumstances, counsel proceeded to call his witnesses.

*The duke of Marlborough* was called and produced the first letter dated the 29th of November. After receiving it he went to the place at the time appointed.

It was at the first tree near the stile in Hyde Park, in the way to Kensington, at the end of the Serpentine water; betwixt that water and a little pond. I was there some time and saw nobody stop that I could suspect to be the person; upon which I was going away; but as I came to Hyde Park corner, I turned my horse, and saw a person stand loitering, and looking at the water over the bridge. This was, I believe, within twenty yards of the tree, and this induced me to go back again. I rode up to the

person, very gently, and passed by him once or twice, expecting him to speak to me; he did not. I made him a low bow, and asked him if he had something to say to me? He said, No, I don't know you. I said, I am the duke of Marlborough; now you know me, I imagine you have something to say to me. He said, No, I have not. Then I rode away.

Was your grace armed?—I had pistols before me.

Had your grace any greatcoat on?—No, I had not. My star might easily be seen.

The prisoner at the bar was the man he saw in Hyde Park; the witness had a friend with him, but at some distance.

The duke then produced the second letter, which he had received a day or two after the first.

Counsel for the prisoner objected that as the first letter demanded a valuable thing, namely, a genteel employment for life, and as the second demanded a different one, namely, two or three hundred pounds in bank-notes, the contents of the second could not be evidence on a charge of writing the first. On the whole, however, from his 'opinion of the defendant's innocence, and the substantial merits of his defence,' he decided to keep nothing back.

The Court decided that the second letter was admissible, and it was accordingly read.

After receiving this letter, the duke went

to Westminster Abbey at the time the letter appointed.

I had been walking there about five or six minutes before I saw anybody that I suspected ; then I saw the person I had seen before in Hyde Park, and another person who seemed to be a good-looking man, a substantial tradesman ; they came in and looked on the monuments. I knowing the person again, went and stood by them ; but the prisoner said nothing to me. Soon after they both of them went towards the choir ; the stranger, I may call him, went into the choir, and the prisoner turned back and came towards me, but did not speak to me. Then I asked him if he had anything to say to me, or any commands for me ? He said, No, my lord, I have not. I said, Sure you have ? He said, No, my lord. He walked up and down one side of the isle, and I the other, to give him a little more time ; but he did not speak. Then I went away out at the great door, and left him in the Abbey. I looked back to see if he watched me going out, but I did not see him.

Had your grace anybody with you in the Abbey ? -- There were two or three people placed in disguise, ready, if I had given them the signal, to have him taken up. Though I was certain it was the same person I had seen and spoke to in the Park, I thought not proper to give the signal, but to run a little longer risk rather than to take up an innocent man.

The second and third letters were then read. After the reading of the fourth, the duke said :—

There is no date to this letter. About a week or



ten days after I received this letter, I sent a message to the coffee-house, by Mr. Merrick, who returned and told me he found Mr. Barnard there, and that he said, What could the Duke of Marlborough want with him? He had spoke with him once in Hyde Park, and another time in Westminster Abbey. The messenger told me he said he would wait on me, which he did at Marlborough House about half an hour after ten o'clock, I think on the Friday following. I cannot be sure as to the day. When he came in, I knew, at first sight, it was the same person that I had seen in the Park and in the Abbey. I desired him to walk with me into a room, and immediately shut the door when we were in. I asked him as before; he said he had nothing to say to me. Then I told him of the last letter I received, that it mentioned his name, and that he knew something concerning my safety; he said, he knew nothing of it. Then I recapitulated all the letters, beginning with the first, and remarked to him, that it was strange to me, that a man that wrote so very correct, without false English in any shape, should be guilty of so low an action. He said, A man may be very learned, and very poor. I then took notice of the second letter, and said, There must be something very odd in the man; he said, I imagine the man must be mad. I said, He seems surprised that I should have pistols; said he, I was surprised to see your grace with pistols, and your star on. I said, Why was you surprised at that? His answer was, after stopping a moment, It was so cold a day; I wondered you had not a greatcoat on. Then I afterwards showed him the letter again where his name was mentioned, and walked with him to the window; and as I read it,

when I came to that part where it said his father was out of town, he said, It is very odd, my father was then out of town. I said nothing to him of that, though it struck me a good deal, as there was no date to the letter. I said, If you are innocent, it behoves you much more than me to find out the author of those letters, particularly the last; for it was an attempt to blast his character behind his back. He seemed to give me a smile, and away he went. I did not apprehend him then.

*Cross-examined*—The witness said he had received the first two letters by their being put under the door of the Ordnance Office. When he was in Hyde Park there were several people on horseback, and some few walking in a hurry on foot. There was nothing going on to account for any person loitering; it was a very cold day. The prisoner did not in the least offer to follow the witness, he seemed to go the other way. The witness stood near the prisoner in the Abbey before the other person left him, in hopes that he would speak to him, if he was the person that wrote the letters. It was possible that the other person might believe that the witness wanted to speak to the prisoner. There were several persons attending the witness in the Abbey, but he did not speak to any of them. The expression in the third letter, as to the witness having a companion, might be applied to the gentleman that went away with him in the

coach. The witness never heard of the prisoner before he received the third letter. The prisoner came readily to his house. He made no secret of seeing the witness in the Park and in the Abbey.

Your grace mentioned he said, It is very odd, my father was out of town then ! Could your grace apply that, in the manner it was spoke, that his father was out of town when the message came to him?—I really understood him, that he knew his father was out of town at the time of his writing the letter.

Did your grace mention the time you received it?—No, I did not mention any time.

Did he come punctually to his time?—He did.

In what manner was he apprehended?—I do not know ; I understood he was summoned.

It has been said he went away with a smile. Pray, my lord duke, might not that smile express the consciousness of his innocence as well as anything else?—I shall leave that to the Great Judge.

*James Merrick* was sent by the duke of Marlborough to Storey's-gate coffee-house to tell the prisoner that the duke wished to speak with him ; he expressed some surprise that the duke should want him, but no fear. This was on Tuesday, the 25th of April, and he said he would wait on the duke on the Thursday following.

*Cross-examination*—The prisoner's reason for not waiting on the duke sooner was that he was going out of town. He said he had seen his grace three times in his life before, once in

Hyde Park and once in Westminster Abbey, and once at the camp at Byfleet. He said he did not know the duke when he saw him in Hyde Park till the duke himself told him who he was.

Did he tell you what had passed either in the Park or in the Abbey?—He told me, that in the Park the duke rode up to him, and asked him, Sir, do you want anything with me? His answer was No. Then the duke asked him, If he knew who he was? He answered No again. Then the duke told him he was the duke of Marlborough; then he made his bow; and in Westminster Abbey he told me he thought the duke had spoke to him; but on turning about he said he did not; and he turned and went away.

Did he tell you this voluntarily?—He did. At first he seemed surprised, and then said he recollected these circumstances.

Did he express any signs of fear?—No, but he seemed much surprised.

WILLIAM MARSDEN—I was appointed by his grace the duke and Justice Fielding<sup>1</sup> to watch the duke in

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<sup>1</sup> Sir John Fielding, the well-known blind police magistrate, had a curious reputation for philanthropy and dishonesty, well deserved apparently in both respects. He carried on a plan for the suppression of robberies, devised apparently by his half-brother Henry, also a police magistrate, but now better known as an author, and he devised and apparently worked a scheme for turning destitute boys into sailors. He was constantly accused of 'trepanning,' and had to defend himself and his half-brother from an accusation of countenancing M'Daniel in his practices as a thief-taker. He acted as his brother's assistant for some years, and on his death (1754) succeeded to his office, and died in 1780.

Westminster Abbey, and had two constables there to apprehend the person, if his grace had thought proper to give the signal. We were not all together, but dispersed, that our intention might not be known; I was within the choir hearing the prayers for some time.

He saw the meeting between Barnard and his friend and the duke; presently Barnard's friend went off, and Barnard went back and stood looking at the duke. Afterwards he saw the duke speaking to Barnard, but was not near enough to hear what was said. The duke then went out by the door he had come in by, and was immediately followed by the other gentleman who was in attendance on him.

I followed to see what passed; the gentleman, the duke's acquaintance, walked opposite to the duke. Mr. Barnard was got looking behind a post; anybody that was on that side that he was on could see him, but a person on that side his grace was on could not; I believe it was impossible for his grace to see him at that time. He looked after his grace a considerable time, then walked back; I followed his grace, and told him what observations I had made; his grace immediately told me, the man in black was the man he had seen in Hyde Park. Then I said, I wonder your grace did not give the signal to have him apprehended. His grace said the same he has repeated here, He would rather let it be a little longer than to take up an innocent man; he should hear of him again, he apprehended, for he seemed to be afraid to speak to him at that time.

Was he apprehended after this?—He was. I procured him to come before Justice Fielding, by a sham summons, in which he was accused with assault and battery; he was not taken up till he came there, then he seemed surprised.

Did he tell you about anything that happened in Westminster Abbey?—I was with him in the dining-room at Mr. Fielding's in order to take his examination; I went, as it were, out of complaisance to him, not to leave him alone. He talked a great deal, but I did not make such observations of it as I should have done if I had thought of his coming here. I remember he said he ordered his friend to walk off, that he might see what the duke wanted with him; and said, he thought the duke must come there by appointment. He mentioned something about the duke's giving him a place or post; I think he said he ordered his friend to walk off, to see if the duke would give him some place; or, Perhaps the duke wants to give me a place.

*Cross-examination*—The summons that was served on the prisoner was only made out as a decoy. The name in it is that of one of the constables who were posted on Westminster Abbey, Roger Boucher. T. Barnard did not show any unwillingness to come; he looked at the summons, and said, 'It is a summons from Mr. Fielding.' He read it over, and said, 'Roger Boucher! I know nothing of him; give him my compliments; tell him I will wait on him.'

This concluded the case for the prosecution,

and after Barnard had declared his innocence, evidence was called for the defence.

*John Barnard* was father of the prisoner, who was employed by him in his business as a builder and surveyor, principally, but also in receiving great sums of money. His accounts had always stood right, and he had been possessed of considerable sums of money.

Had you any occasion to send him to Kensington on Sunday the 4th of December?—I had nothing, but circumstances brought the day to my mind since; I gave him an order on that Sunday morning when we were at breakfast, to go to Kensington, to know whether there was some money paid by the treasurer of the turnpikes for gravel. I have a brother there named Joseph; he went there and did his business, and dined with my brother.

How do you know that?—Because he told me so; and the solicitor of the turnpike told me he had been with him, and in consequence of which I had my money afterwards.

Have you ever heard your son take any notice of his meeting with the duke of Marlborough that day?—When he came home he told me he had met the duke of Marlborough, and these circumstances of his grace's taking notice of him; he mentioned it as an extraordinary thing. I asked him if he had not looked a little impudently (as he had a near sight) at him, or pulled his glass out? He said he saw another gentleman at a distance, and the duke was armed; and he imagined there might be a duel going forwards. He has from that time to this mentioned it

as a very strange event several times in my house, without any reserve at all.

*Cross-examined*—Apart from the witness's order the prisoner had liberty to go to where he pleased.

Did you hear him mention his seeing the duke of Marlborough in Westminster Abbey?—I have very often, and very publicly, and with some surprise; as he has mentioned the meeting in Hyde Park. I said to him, I would not have you be public in speaking of things of this kind, lest a use be made of it to your disadvantage.

THOMAS BARNARD—I am the first cousin to the prisoner at the bar. On Saturday, the 3rd of December, I was at Kensington, and lay at my uncle's house there, and dined there. On the Sunday the prisoner came there before dinner; he said he had been to do some business that way. He dined with us; there were my uncle, aunt, he and I. He related that circumstance to us of meeting with the duke of Marlborough in Hyde Park; he said he rode up to him, and asked if he knew who he was; he answered No; he replied, I am the duke of Marlborough. He related it with some cheerfulness, though as a matter of surprise.

How long have you known the prisoner?—From his birth; he is in business with his father; I always understood he would succeed his father. I never knew him behave otherwise than well in my life. I never thought him extravagant, nor never heard so; I had always looked upon him to be an honest man; his father is in very great business.



Should you look upon it that a small place would be equal to the chance of succeeding his father in his business?—I should never have thought of such a thing; I look upon his situation in life to be a very extraordinary thing. I thought he would give the preference to that above everything else.

JOSEPH BARNARD—I am uncle to the prisoner at the bar; I live at Kensington. My nephew, Thomas Barnard, lay at my house on the Saturday night, and dined with the prisoner at the bar on the Sunday. I remember he then mentioned having met with the duke of Marlborough in Hyde Park, while we were sitting at dinner. I said I was surprised he should meet with him that day; he said he saw but one gentleman at a distance, and the duke was armed; and his grace looked him full in the face, very earnestly (which he seemed to speak with a great deal of pleasure to me); he is very near-sighted, he can see nothing at a distance without the use of a glass. I have heard him speak four or five times of seeing the duke in Westminster Abbey.

THOMAS CALCOT—I live at Kensington; I remember the prisoner coming there on a Sunday morning—a very cold, foggy morning—with some message from his father to me, to know whether the solicitor had paid some money or not. He was under his father, as I am under mine. He desired me to go with him; I said, Stay and dine with me; he said he could not promise, because he had promised to dine with his uncle Joseph. He went into the parlour and said, It is vastly cold; there has been the oddest accident happened as I came over the Park! The duke of Marlborough came up to me, and asked me if I knew him? I said, No. He asked me if I wanted anything

with him? I told him, No. He said, I am the duke of Marlborough, if you want anything with me; then the duke went away, and he came there. He expressed great surprise at it, and I thought it a very odd affair.

HENRY CLIVE—I have known the prisoner two years. I remember dining with him on the 8th of December, at his father's house, with a great deal of company; I heard him then say at dinner, that some few days before, he had met the duke of Marlborough in Hyde Park; that the duke asked him if he had any business with him? He said, No; he then told him again who he was, and asked him the same again; he said, No. That the duke seemed in some confusion, and was armed; and he thought he was about a duel; and indeed I thought it was a very great lie. I have gone very frequently to his father's in relation to Brentford Bridge.

Can you name anybody that dined there that day?—Yes, there was Mr. Wilson and his lady, Mr. Tunstall and his lady; another gentleman and his wife, and the prisoner's younger brother that is at Westminster School.

*Mrs. Mary Wilson* was called, and corroborated the last witness.

JAMES GREENWOOD—I live at Deptford, with a relation in the brewing way; I came from Deptford on Saturday to the prisoner's father's, and on the Sunday following I was there at breakfast. I solicited the prisoner to get himself dressed to go with me into the Park, being to meet a person at twelve o'clock; I with a good deal of difficulty got him to

dress himself. I put my shirt on in the parlour, and after that he put on his. I fancy we breakfasted about nine o'clock. When we got to the end of Henry the Seventh's chapel, the prisoner would have gone the other way into the Park, without going through the Abbey; I took hold of his sleeve, and said, Barnard, you shall go through the Abbey; this was a little after eleven. This was no unusual thing; we have several times walked in the Park, and sometimes parted.

Which is the nearest way to the Park?—I do not know which is the nearest way, through the Abbey, or by the side of it; this was the first time I believe that I ever saw the monument of General Hargrave. After that we walked down to the monument erected at the public expense for Captain Cornwall; the preacher was in the pulpit. When we were standing at Captain Cornwall's monument, the prisoner made some observation of the execution of it in his own way. After we had stayed there some time, I saw his grace the duke of Marlborough, who was got pretty near us; upon seeing the duke, I jogged him by the elbow, and said, Step this way; he seemed to look at him.

Had you heard what happened in Hyde Park previous to this?—I had; I believe it was told me by the prisoner at the bar. On my jogging him we walked up the middle isle together towards the choir. I said, Did you see that gentleman in the blue coat—do you know him? No, said he, not I. No, said I, it is the duke of Marlborough; we will walk to the monument again. The duke came, and placed himself pretty near me a second time; after this we walked away. I believe we walked some

considerable time in that isle in which is that monument of Sir Godfrey Kneller; there I believe we passed and repassed again.

Why did you jog him?—Because he is very near-sighted. At last I think it so happened, we passed the duke between two of the pillars; and as I had hold of his arm walking together, there was barely room for three people to pass abreast; the duke rather gave way, and made, as I thought, a kind of bow. Upon this I said, The duke of Marlborough's behaviour is extremely particular; he certainly has something to say to you. I suppose he does not chuse to say it while I am with you; I will go into the choir, and do you walk up and down here, and he will possibly speak to you. While I was there I looked; the first thing I saw was the duke of Marlborough and the prisoner at the bar, with their heads bowing together, as if it was the first salutation.

Had the prisoner the least inclination to go into the Abbey before you proposed it to him?—No, he did not discover any.

Did he discover any inclination to be left alone when you proposed to go into the choir?—No, he did not in the least; in some few minutes after, the prisoner and I met together, he told me the duke of Marlborough was gone out of the Abbey; he had seen him go out. I said, What passed? To which he replied, The duke said, Did you speak to me? or who spoke first I cannot tell.

Is Mr. Barnard very near-sighted?—He is; I question whether he can see a person across this room.

Where did you go when you went out of the Abbey?—We went immediately into the Park; and

after walking there we met with two ladies whom I knew, and to whom Mr. Barnard was not unknown, to whom we related this affair; he always repeated these things, that is, this, and that in Hyde Park, as matter of great curiosity.

What is his character?—I know nothing to the contrary but that he is an industrious, sober young man.

Did you ever hear that he was a profligate, expensive man?—No, never.

His father is in great business, is he not?—His father's business is a very considerable thing.

*William Ball* was the master of Storey's-gate coffee-house, and remembered Merrick leaving a message with him for Barnard. He gave Barnard a good character, and had since heard him speak of having met the duke of Marlborough; he said he had been to his grace's house, but did not say what he, his grace, had said.

What did you say to him?—I told him maybe he was going to have a commission; he said, he would not thank his grace, except it was a very good one.

How did he appear as to cheerfulness, or dulness, or the like? He seemed to be very cheerful, not in the least concerned; the same as usual, composed, rather more cheerful.

Mr. Ford—While he was in custody, Mr. Fielding did me the honour of sending for me; he told me it was upon some business that concerned the duke of Marlborough's life; he asked me to go along with

him and Mr. Box to New Prison, which I consented to do. We went together in a coach ; this was about twelve at night, and Mr. Barnard was then in bed ; I have really forgot what day it was. Mr. Fielding told me he had omitted examining his pockets at the time he was before him ; he then searched his pockets in order to see whether he had any letters or any writings that might have given light into the affairs ; he very readily let me look into his pocket-book and papers. Mr. Fielding with great candour told him he was in the hands of a very honourable prosecutor, and one that would be as glad to discover his innocence as his guilt. Mr. Fielding asked him for his keys, and he gave him the keys of his scrutoire and compting-house with great readiness ; and I remember that I told him, that, if he was guilty, some copies might be found to correspond with the original letters ; and if nothing of that sort did appear, it would be a circumstance in his favour.

*The Rev. Dr. Markham* had known the prisoner for some years, and always considered him a young man of remarkable sobriety and attention to business ; he had intrusted him with the execution of some matters of importance, in which he acquitted himself very ably and honestly. He had no reason to suppose that he was in want of money.

*Samuel Cox* gave similar evidence ; he then went on—

When I was first acquainted with him, I observed he had remarkable short sight ; when he has looked

full at me, I have thought he sneered at me; he has such a fall with his eyelids on account of his short-sightedness; I have found his eyes so fixed upon me, that I have been going to speak to him, which by my long acquaintance with him I since found was only an accident.

*Robert Fanshott* had known the prisoner about five or six years. The prisoner had told him of his meetings with the duke of Marlborough in Hyde Park and Westminster Abbey in the same way that the story had already been told to the Court.

It appeared to me to be a very strange story, and he seemed to tell it as such, as I or anybody would have told it. I suspended my judgment upon it, and never related it to anybody, only to my father and another gentleman, and they looked upon it as a great lie that Barnard had invented; I knowing his character, did not take it as such, but thought he must have known it to be as he said.

Twelve other persons were then called who all agreed in giving the prisoner an excellent character, while several of them spoke to his having ample pecuniary means at his disposal.

*Mr. Serjeant Davy* then addressed the jury, arguing that the evidence called by the prisoner was all consistent with his guilt. The son might have suggested to the father that he should go to Kensington on the Sunday morning; though 'I did not chuse by any means to ask the father

any question ; I should have disoblged my noble client if I had done it.' He mentioned his meetings with the duke to several people, but as the meetings themselves were public, the prisoner had no reason for concealing them. Greenwood's evidence showed that the prisoner did not want to go into the Abbey with him ; but when he was noticed there by the duke, he did not go into the Park as he had meant to. Though he talked to all the witnesses so freely about his interviews with the duke, he did not tell Ball anything of what passed between him and the duke at the last interview, when he was accused by the duke of a capital crime. His good character showed nothing, as it was the case for the prosecution that he had a need for money of which he was ashamed.

There was apparently no summing up, or at least it is not reported, and the prisoner was acquitted.

After the conclusion of this case the elder Barnard obtained a rule in the King's Bench that Fielding should show cause why an information should not be laid against him, for misbehaviour in his office as a justice of the peace. On 22nd November 1758, Davy showed cause against it, alleging that the informant must make his election between a civil action which he had already begun, and the present proceeding. It was decided that this was so,



and the informant elected to abandon his civil suit. The case was then adjourned to the next term, to allow affidavits to be made by the Earl of Litchfield and Mr. Pierce. What these affidavits contained does not appear, but after reading them and considering all the facts of the case, *Mansfield L.C.J., Foster, and Wilmot J.J.* decided that though Fielding had acted without any bad, or oppressive, or injurious intention, he had acted irregularly in committing Barnard without taking the information of the Duke of Marlborough on oath, and in neglecting to take the duke's recognisance to prosecute. The rule to show cause was therefore dismissed; but Fielding did not get his costs. (2 Barr, 720.)

LORD BYRON, 1765

## LORD BYRON, 1765

(10, *STATE TRIALS*, p. 1178)

*The trial of William, Lord Byron, Baron Byron of Rochdale,<sup>1</sup> for the murder of William Chaworth, Esq., before the Right Hon. House of Peers, in Westminster Hall, in full Parliament, on Tuesday the 16th and Wednesday the 17th of April, 5 GEORGE III., A.D. 1765.*

ABOUT eleven o'clock the Peers came from their own house into the court erected in Westminster Hall, in a procession headed by the Lord High Stewards, gentlemen, and the clerks of the House of Lords, and comprising the judges, the

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<sup>1</sup> *William, fifth Lord Byron*, is chiefly remarkable for the story disclosed in this trial. After his acquittal he lived in seclusion at Newstead, earned the nickname of 'the wicked lord,' and ill-treated his wife. His brother was grandfather to the poet. William Chaworth was cousin to Lord Byron, and his brother was grandfather to the Mary Anne Chaworth of Annesley, with whom the poet was in love when he was sixteen.

peers, and the Earl of Northington,<sup>1</sup> Chancellor of Great Britain, appointed Lord High Steward for the occasion.

Proclamations having been made, there were read, the King's Commission reciting the finding of an indictment for murder by a Middlesex Grand Jury against the prisoner, and the appoint-

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<sup>1</sup> *Robert Henley, first Earl of Northington* (1708?-1772), was educated at Westminster and St. John's College, Oxford; and after having been elected a fellow of All Souls, was called to the bar by the Inner Temple in 1782. He went the Western Circuit without much success, and succeeded in 1745 to the family estate, part of which consisted of the site of what is now the College of Surgeons in Lincoln's Inn Fields. In 1747 he was returned to the House of Commons by Bath, of which town he was already the Recorder, and joined the Leicester House party, which supported Frederick, Prince of Wales, against his father, George II. He became King's Counsel in 1751 on being appointed Solicitor-General to the Prince of Wales (the future George III.), and was made his Attorney-General in 1754. In 1756 he succeeded Murray as Attorney-General, and owing to the difficulties of the Newcastle-Pitt Coalition Ministry in 1757, became Lord Keeper in that year. The King's dislike for him, owing to the Leicester House connection, prevented his being made Lord Chancellor; but he was raised to the dignity of a peerage, under the title of Lord Henley, in 1760, in order to preside at the trial of Lord Ferrers for the murder of his steward. On the accession of George III. he was made Lord Chancellor, and continued to act as such through the administrations of Bute, Grenville, and Rockingham. He became Lord President in 1766, and resigned in 1767. He died in 1772. He left the reputation of a fair and moderately good judge. He was also noted for a great love for port, a boisterous manner of life, and a dislike for formalities. As a politician he probably never had much influence.

ment of Lord Northington of High Steward; the certiorari removing the indictment to 'be determined before us, and not elsewhere'; the return thereto; and the indictment.

THE LORD HIGH STEWARD—Is it your lordships' pleasure that the judges have leave to be covered?

LORDS—Ay, ay.

CLERK OF THE CROWN—Serjeant-at-Arms, make proclamation for the lieutenant of the Tower to bring his prisoner to the bar.

SERJEANT-AT-ARMS—Oyez, Oyez, Oyez! Lieutenant of the Tower, bring forth William Lord Byron, your prisoner, to the bar, pursuant to the order of the House of Lords.

Then William Lord Byron was brought to the bar by the deputy-governor of the Tower, having the axe carried before him by the gentleman-gaoler, who stood with it on the left hand of the prisoner, with the edge turned from him. The prisoner, when he approached the bar, made three reverences, and then fell upon his knees at the bar.

LORD HIGH STEWARD—Your lordship may rise.

The Lord High Steward then explained to the prisoner the nature of the charges against him, concluding—

As an additional consolation, your lordship will reflect that you have the happiness to be tried by the

supreme judicature of this nation; that you can receive nothing from your peers but justice, distributed with candour; delivered too under the strongest obligation upon noble minds, honour. These considerations will, I hope, compose your lordship's mind, fortify your spirits, and leave you free for your defence.

Then after the prisoner had pleaded Not Guilty, and Mr. Cornwall had opened the indictment, the Attorney-General<sup>1</sup> opened the case. He explained that if it was proved that the prisoner had killed a man it was presumed

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<sup>1</sup> *Fletcher Norton, first Baron Granley (1716-1789), was called in 1739, was for many years leader of the Northern Circuit, and apparently a very able advocate. He became King's Counsel and Attorney-General to the County Palatine in 1754. In 1756 he was returned to the House of Commons for Appleby, and for Wigan in 1761. He became Solicitor-General in 1762, and Attorney-General in 1763. He hoped to succeed Clarke at the Rolls in 1764, but Lord Northampton prevented the appointment. He was dismissed from his place in 1765, on the formation of the Rockingham Ministry, and represented Guildford in 1768. He became Chief Justice in Eyre of His Majesty's Forests south of the Trent, and a Privy Counsellor in 1769. In 1770 he was elected Speaker, and again in 1774, when he made a remarkable speech to the King on the occasion of the presentation of a bill for providing for his household expenses, pointing out how liberally this had been done. He was not re-elected Speaker by the new Parliament in 1780, and was created a peer in 1782, it was said, by Rockingham's favour, in order to revenge himself on Shelburne, who had procured a peerage for Dunning without his knowledge.*

that he had murdered him, and that it lay on him to prove that he had not. If two men had a quarrel, and after that had time to allow their passions to cool, and then fought, and one killed the other, that was murder. But if the homicide was done under such circumstances of extenuation as to induce them to believe that it was not done with malice aforethought, then they might find it manslaughter.

The facts of the case were that on the 26th of January the prisoner, the deceased, and other gentlemen of the county of Nottingham met, as they usually did once a week, to dine together at the Star and Garter tavern<sup>1</sup> in Pall Mall.

About seven at night the conversation turned upon the subject of game; upon this occasion Mr. Chaworth had something of a dispute with the gentleman who sat next him about the best method of preserving the game. The prisoner at the bar interfered upon that subject, and said, in his opinion, the way to have game was to take no care of it. Mr. Chaworth happened to be of a different opinion, and thought the best way was to be strict with poachers, and thereby to preserve the game; this drew on some altercation. Mr. Chaworth added, that he believed

<sup>1</sup> This tavern still exists on its old site, though the present building is modern. It seems to have been the fashionable place for meetings of clubs. It is now probably as far removed from a club-house as any other building in Pall Mall.

there was not a hare in that part of the country, but was preserved by himself or sir Charles Sedley;<sup>1</sup> upon which lord Byron offered a wager of £100 that he had more game in a manor or manors of his, than Mr. Chaworth had upon any that belonged to him. Your lordships will find a little difference in the account given by the witnesses touching the terms of the wager; but you will have them from the witnesses themselves, who are all gentlemen of character, and as they have most of them been already examined before the coroner, and again before the grand jury, they did not choose to be examined by those concerned in the prosecution; but said, when they were called and examined before your lordships, they would speak the truth, as doubtless they will; and I only mention this circumstance as an excuse for myself, if I should not happen to open the evidence exactly as it may come from the witnesses.

My lords, Mr. Chaworth having said he was willing to accept the wager, said that it would be proper to make a memorandum of it, and called for pen, ink, and paper. After that, it happened that sir Charles Sedley's manors were mentioned; upon which the noble prisoner at the bar said, with some degree of heat, sir Charles Sedley's manors! where are his manors? To which Mr. Chaworth replied, Why, Hucknel and Nuttall; his lordship then said, I know

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<sup>1</sup> *Sir Charles Sedley* was apparently the son of the baronet of the same name who flourished as a rake and writer after the Restoration, and known to lawyers and readers of Pepys as having been fined for the common law misdemeanour of outrageous behaviour in public.



no manors of sir Charles Sedley's; to which Mr. Chaworth replied, sir Charles Sedley has a manor, the manor of Nuttall is his, and one of his ancestors bought it out of my family; and if your lordship wants any further information about his manors, sir Charles Sedley lives in Dean-street, and your lordship knows where to find me in Berkeley-row.

My lords, whether this was a real dispute between lord Byron and Mr. Chaworth, about sir Charles Sedley's manors, or whether it was only used as a means of affronting and quarrelling with each other, it is impossible for me to say; however, after this quarrel, the parties stayed in company for a considerable time, I believe near an hour, during which time both the noble prisoner at the bar and Mr. Chaworth entered into conversation with the company that sat next them on indifferent subjects, and particularly lord Byron was observed to be in good-humour.

The company thought that there was an end of the quarrel, and that no more would be heard of it. About an hour after the first quarrel, Mr. Chaworth went first out of the room, and it happened a gentleman went after him to the door, and he asked the gentleman whether he had observed the dispute between him and lord Byron? He said he had, in part; upon which Mr. Chaworth asked him, if he thought he had gone far enough? To which Mr. Donston (for that was the gentleman's name) said, he thought he had gone too far; it was a silly business, and neither of them should think of it again.

After this Mr. Donston returned to the room, and met Lord Byron coming out; Lord Byron

called to the deceased, and one of them called a waiter, whom Lord Byron asked for an empty room. The waiter showed them into a room on the floor below that on which they had dined, and left them alone there together with 'a poor little tallow candle,' which was all they had for light, except a dull fire. According to the statement of the deceased, the prisoner asked Chaworth

whether he was to have recourse to sir Charles Sedley to account for the business of the game, or to him? The deceased said, To me, my lord; and if you have anything to say, it would be best to shut the door, lest we should be overheard. Mr. Chaworth went to shut the door, and turning from the door he saw the noble prisoner just behind him, with his sword half-drawn, or nigh drawn, and at that instant lord Byron called out—Draw! Mr. Chaworth finding his lordship in such a situation, had nothing left for it but to draw as quickly as he could; by his own account he has told, he gave the noble prisoner the first thrust, and entangled his sword in his waistcoat, and thought he had wounded him; after that, lord Byron shortened his sword, and stabbed Mr. Chaworth.

The landlord of the inn was called up by the waiter, who had heard a bell ring; he found the two men clasped in each other's arms, each holding a sword. He disarmed them, and sent for a surgeon. Meanwhile the company came in from the room above. Mr. Chaworth was taken home,

where he met Mr. Levinz, a friend of his, who had been sent for, to whom he made a statement, the upshot of which was that

when lord Byron carried him into the room, he did not think he had any design of fighting him; but afterwards he thought he had got him to an advantage, and that was the reason of his fighting him.

Another statement had been made by the deceased, which had been reduced into writing, which would be produced.

The Attorney-General then concluded as follows:—

I cannot sit down without mentioning another circumstance, which further evinces his majesty's love of justice, and his inflexible resolution to do right, according to law, without favour or affection, however high and respectable the noble personage may be, who is concerned in this important cause. Your lordships all remember upon another very solemn and melancholy occasion, as the event proved, the then noble prisoner had killed a person of very inferior rank, who left neither a fortune nor relations equal to the expence of a prosecution of this sort. His majesty, from his love of justice, sustained the whole charge, and committed the care of that prosecution to his own servants. But in this present instance, the deceased having a large fortune, and the inheritor of it being both able and willing to carry on this prosecution, his majesty, from the same love of justice, and that there might not be the appearance of partiality to the noble prisoner at the

bar, has left the prosecution, and the entire management of it, in the hands of the private prosecutor, who, actuated by no motive of revenge, only hopes that there will be a fair, but a strict and full inquiry for the blood of his deceased relation; being thoroughly satisfied that your lordships will hear with patience, deliberate with caution, and determine with wisdom, justice, and truth.

THE SOLICITOR-GENERAL, Mr. De Grey,<sup>1</sup> then called John Hewett, who said that he had been at the Star and Garter in Pall Mall on the 26th of January.

Was it at any particular meeting?—It was; it was a county club. Of what county?—The gentlemen of Nottinghamshire.

I desire you will name the gentlemen then present.—Lord Byron; Francis Molyneux, Esq.; the Honourable Thomas Willoughby; Frederick Montague,<sup>2</sup>

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<sup>1</sup> William De Grey, Lord Walsingham (1719-1781), was educated at Christ's College, Cambridge, and called to the bar by the Middle Temple in 1742. He became King's Counsel in 1758, and Solicitor-General to the Queen in 1761. In the same year he was elected to the House of Commons by Newport, Cornwall, and became Solicitor-General in 1763, and Attorney-General in 1766. He afterwards represented the University of Cambridge. He was a powerful supporter of Lord North, and as Attorney-General conducted the proceedings against Wilkes in 1768. He succeeded Wilmot as Chief Justice of the Common Pleas in 1771, and resigned in 1780 when he was made a peer. He was a sound lawyer, and possessed an extraordinarily retentive memory; when gout prevented his writing, he would sum up correctly a case which had lasted nine or ten hours.

<sup>2</sup> Frederick Montagu (1733-1800) was the son of Charles Montagu of Papplewick in Nottinghamshire, who represented various places, and finally Northampton, in the House of

Esq. ; William Chaworth, Esq. ; George Donston, Esq. ; Charles Mellish, Esq. ; Sir Robert Burdett,<sup>1</sup> Esq. ; and myself.

At what time did the company dine?—The dinner was on the table precisely at a quarter after four o'clock.

Do you recollect any conversation relative to the game?—I do ; it was some time after dinner before any such conversation arose.

You will please to recollect the time.—At or about the time the drawer brought in the first reckoning.

About what time might that be?—It was about, or after, seven o'clock. The rule of the club was to have the bill and a bottle brought at seven o'clock.

Do you recollect whether it was about seven, or long after seven o'clock?—I believe it could not be long after seven o'clock.

Had the company at that time drank much?—I think the company were all very sober when we parted.

Do you mean that all the company were very sober

Commons. His mother was well known in society after her husband's death, and was an intimate friend of Mrs. Delany. He was educated at Eton and Trinity College, Cambridge, where he made the acquaintance of Gray and Mason, which he afterwards sedulously cultivated. He was called by Lincoln's Inn in 1757, became a Bencher in 1782, and sat for Northampton and Higham Ferrers in the House of Commons. He became Lord of the Treasury in 1782 and again in 1783, and was a member of the committee that prepared Warren Hastings' impeachment. He retired from public life in 1790.

<sup>1</sup> Sir Robert Burdett, fourth baronet, the father of Sir Francis Burdett, the well-known politician of a later generation.

when they parted at seven o'clock?—I think so, my lords.

I wish Mr. Hewett would recollect the conversation that passed about the game.—What I heard relating to it was, a dispute in whose manor, or in what manor, there was the most game.

Do you recollect by whom the conversation was begun?—The conversation about the game began from myself.

In what manner?—By starting a proposition for preserving the game, besides the present system of the game laws, which has very often, where I have been, produced an agreeable conversation.

Who were the persons in particular who entered into that conversation?—I believe all the company, more or less.

Do you recollect what Mr. Chaworth said on that occasion?—I recollect hearing a bet proposed of £100.

Was that the first time Mr. Chaworth had said anything upon the subject?—I cannot take upon me to say that; I can describe the order in which we sat, and the persons I was in conversation with at the time the bet was proposed.

The witness then described the arrangement of the table, from which it appeared that he was at the end of the table, Mr. Chaworth on his left, and Lord Byron farthest from him on his right.

SOLICITOR-GENERAL.—After this bet was proposed, what passed?—I did not perceive any other conversation between Mr. Chaworth and lord Byron, but what I have mentioned during the whole day.

At what time did the conversation close upon that subject?—Very soon, my lords.

What conversation followed upon that?—A great variety, I think.

Did Mr. Chaworth join in that conversation?—He did, my lords.

Did lord Byron join in any conversation afterwards?—Lord Byron being the furthest from me of any of the company, I did not hear any of his conversation afterwards; but I observed he was conversing with Mr. Molyneux afterwards.

Did you observe whether lord Byron seemed to be in or out of humour after the conversation about the game?—He seemed to be conversing with Mr. Molyneux in good-humour.

How long did this conversation last before Mr. Chaworth went out of the room?—It must be after eight o'clock before Mr. Chaworth went out of the room.

Did Mr. Chaworth, when he left the room, take anybody with him?—Mr. Donston was out of the room at the same time; but whether he went with him or followed him, I do not know.

How long did Mr. Donston stay out of the room?—A very short time, I think.

Did lord Byron leave the room?—Lord Byron left the room at the very instant Mr. Donston came in.

Mr. Hewett says that Mr. Donston stayed out of the room but a very short time; I should be glad to know what he reckons as a short time.—I am not able to judge of the time, but from the hour of paying the reckoning, and the time I went into the room where Mr. Chaworth was wounded.

What was the first account you had of anything that passed after they quitted the room?—Almost at the instant of Mr. Donston's sitting down, a drawer came into the room, and told us that lord Byron and Mr. Chaworth were fighting.

Did the company go down?—They went down as fast as they could.

Did you go into the room where Mr. Chaworth and lord Byron were?—I did.

Where was the room?—It was a back room up one pair of stairs.

What did you observe in that room?—I was lame at that time; when I got into the room Mr. Chaworth was sitting in an armed chair, with his left leg on another chair, and leaning his head against Mr. Donston.

Did you observe the condition in which Mr. Chaworth was?—I did. He was wounded in the belly, and had his hand upon it, and there was a good deal of blood under the chair.

Did Mr. Chaworth say anything to you?—He did.

What was that?—He said he was a dying man, and gave me an account of the transaction, and of what passed between lord Byron and him; he said lord Byron told him he wanted to speak to him; upon which they went into that room together; that he told lord Byron it was better to shut the door that they might not be heard; that while he was doing it, lord Byron bid him draw; that he saw his lordship's sword half-drawn, upon which he whipped out his own as quickly as possibly he could, to give him the point, and he asked how lord Byron was, whether he was mortally wounded, as he thought he was about his



breast ; when his lordship shortened his sword, and stabbed him in the belly.

The witness was at Mr. Chaworth's house that night, and was one of the subscribing witnesses to his will. When he left the Star and Garter, he went to fetch Mr. Levinz, who was Mr. Chaworth's uncle. Mr. Levinz lived at Kensington Gore. His coach returned without having found Mr. Levinz, after which he sent to the Duke of Leeds' house, to which they returned answer that he had dined there, and was gone home.

SOLICITOR-GENERAL.—I would ask you if there was any conversation between Mr. Chaworth and you after the making of his will, in the presence of Mr. Willoughby?—There was.

Did Mr. Chaworth make any declarations of what had passed at that time?—He did.

Were those declarations reduced into writing?—They were.

How long was it after they were made before they were reduced into writing?—We went down from the bed-chamber into the parlour.

There Mr. Partington delivered the will into Mr. Levinz's hands?—No, I gave the will into Mr. Levinz's hands in the parlour ; then minutes were made, and some alterations made in them, till we all agreed it was exactly what Mr. Chaworth had said.

Were the minutes transcribed again after those alterations were made?—I believe they were.

Should you know that paper writing again if you saw it?—I should not; but I remember that the contents appeared to me exactly the same with the account I have given your lordships; except the omission of the particular term of Mr. Chaworth's whipping out his sword, and lord Byron's shortening his.

Who wrote the paper?—Mr. Partington, the attorney.

What became of it after it was written?—I do not know.

Did you see Mr. Chaworth after that paper was written?—I did.

Did Mr. Chaworth continue in his perfect understanding till the last time you saw him?—He did. I understood many of the questions put to him, to be with a view of knowing that.

LORD BYRON—Might not a great deal pass in company that you did not hear?—HEWETT—Certainly there might.

Were you not toast-master?—I was.

Might not your attention to that office be the reason that you did not hear several things that passed?—It might; but my ears are not the best at any time.

LORD BYRON—My lords, I have done with this witness.

EARL OF DENBIGH—I desire to know whether the paper writing was shown to Mr. Chaworth after it was copied?—HEWETT—Mr. Chaworth was in his chamber above stairs, the paper was drawn up in the parlour below-stairs; and I went away very soon after.

EARL POULET—Were the alterations in the paper

you mentioned material ones or not?—HEWETT—I thought it my duty to the public to make an exact minute of the circumstances of the day, which minute I have now in my hand, and it corresponds exactly with the paper, except in the circumstance I mentioned to your lordships.

EARL OF BUCKINGHAMSHIRE—I desire Mr. Hewett may be asked if he expected Mr. Chaworth would have come back again?—HEWETT—I did imagine he would have come back.

EARL OF BUCKINGHAMSHIRE—I desire to know whether, when Mr. Chaworth went out of the room, he took his hat with him or not?—HEWETT—I don't know; I did imagine he would come back immediately.

*By the earl of Dartmouth.*—Do you remember the particular discourse on the game between lord Byron and Mr. Chaworth?—There were various discourses upon the subject by different people in company; I was talking about the best method for preserving game, and the discourse turned upon the proposition that it might be a sensible way of preserving game to make it the property of the owner of the soil.

Was there any general debate on the subject of the game?—It might be as to the probable way of preserving the game.

I think you said lord Byron left the room at the instant Mr. Donston returned?—I did.

I desire to know whether lord Byron sat so as to hear what passed between Mr. Chaworth and Mr. Donston on the stairs?—It was a mighty odd-shaped room we were in, the door opened very inconveniently; Mr. Donston was scarcely sat down, when

the waiter came into the room and told us lord Byron and Mr. Chaworth were fighting.

*Frederick Montague*, examined by *Serjeant Glynn*,<sup>1</sup> gave much the same account of the party, and of the quarrel about the game as had been given by Hewett, except that he professed not to be able to give more than a very general account of the actual conversations. The conversation lasted about twenty minutes, and an hour afterwards, about eight, Mr. Chaworth left the room and was followed in a few minutes by Mr. Donston, who returned in a few minutes, when Lord Byron went out. The witness was leaving the room about the same time, and as he was going out of the door of the tavern, the landlord called to him, and told him what mischief had happened. He ran upstairs immediately and ordered one of the drawers to fetch

<sup>1</sup> John Glynn (1722-1779) was educated at Exeter College, Oxford, and called to the bar by the Middle Temple in 1748. He became a serjeant in 1763, but owing to his opposition to the court, never became a king's serjeant. He became Recorder of Exeter in 1764. He formed a close alliance with Wilkes, on whose behalf he often appeared as an advocate. He stood for Westminster in a bye-election in 1768, in the 'Wilkes and Liberty' interest, and after a man had been killed in an election riot at Brentford, carried the seat by a small majority. He continued to act with Wilkes, and was elected Recorder of London in 1772. It was of him that Wilkes said to George III., 'Sir, he was a Wilkite, which I never was.' He was a sound lawyer and an able advocate.

the company from above. On going into the room where the duel had taken place, he found Mr. Chaworth in a chair bleeding and Lord Byron standing by him. Nobody else was in the room when he came in.

Give an account of what passed between Mr. Chaworth and the company when they came in?—Mr. Chaworth first told me that he could not live five minutes; that he forgave lord Byron, and hoped the world would forgive him too; that he would rather be in his own situation than lord Byron's. He said the affair passed in the dark. Upon my desiring an explanation, he pointed to a very small tallow candle, which stood upon the table in the room we were then in. Mr. Chaworth told me, that when lord Byron and he came into the room where they then were, lord Byron asked Mr. Chaworth, if he meant the conversation upon game to sir Charles Sedley or to him? Mr. Chaworth said, If you have anything to say, we had better shut the door. After he had shut the door, he turned and saw lord Byron drawing his sword. He drew his, and made the first pass, and in his pass he entangled his sword in the left side of lord Byron's waistcoat; upon which lord Byron shortened his sword, and ran him through the body.

Was this the whole of what Mr. Chaworth said?—I recollect nothing besides.

Did Mr. Chaworth, from the manner of relating this affair, appear to be sensible or not?—Perfectly so.

*Lord Byron* had no questions to ask this witness. In answer to the *Lord High Steward* he said that he left the room about a minute after

Mr. Donston, that he heard no fighting, that he stopped a few minutes, calling a chair. He heard no provocation given to cause Mr. Chaworth to say, If you have anything more to say to me or Sir Charles Sedley, you will find Sir Charles Sedley in Dean-street, and I live in Berkeley-row. From the discourse that he heard, and from what passed, he did not expect a duel.

EARL TEMPLE—From Mr. Chaworth's expressions, did anything induce you to think that he had wounded lord Byron?—No.

EARL TALBOT—After lord Byron and Mr. Chaworth went out of the room, and were in the room where they fought, Mr. Chaworth said he saw lord Byron's sword half-drawn when he turned from fastening the door; and the gentleman who spoke before, said lord Byron called to Mr. Chaworth, and bid him draw; do you recollect whether Mr. Chaworth said lord Byron bid him draw?—In the conversation that passed I do not recollect that circumstance of lord Byron's bidding him to draw.

EARL POULET—Do you think it was possible to hear what words passed between Mr. Donston and Mr. Chaworth upon the stairs? I should think it was impossible; there was a great screen before the door.

*George Donston* was then called, and examined by Mr. Howe, and gave the same account as the others of the conversation about game between Lord Byron and Chaworth. Sir Charles

Sedley's manor was mentioned, and a bet was proposed, but not made. This was about seven, and both Lord Byron and Mr. Chaworth continued in the company some time after this discourse was over. On Sir Charles Sedley's manor being mentioned, Lord Byron asked which was sir Charles Sedley's manor.

Of whom did lord Byron ask that?—Of Mr. Chaworth.

Did Mr. Chaworth make any answer?—He answered, Nuttall.

Did Mr. Chaworth mention anything more upon that subject to lord Byron? and what?—He did, after lord Byron had repeated the same question.

What was further mentioned by Mr. Chaworth?—Mr. Chaworth said, upon his lordship's asking him over again which was sir Charles Sedley's manor; Surely, my lord, you will allow Nuttall to be sir Charles Sedley's.

Was anything more said respecting sir Charles Sedley, or his manors, or where he lived?—Yes, Mr. Chaworth went on to say, sir Charles Sedley lives in such a place, and can best inform you relating to his manors; your lordship knows where to find me in Berkeley-row.

This finished the conversation, and the witness stayed in the room till Mr. Chaworth went out about eight. The witness thought that he did not take his hat; he went with him a little way out of the room, and had a conversation with him alone.

Repeat what that conversation was that passed between Mr. Chaworth and you.--Mr. Chaworth asked me, if I attended to the discourse between him and lord Byron? I told him I did in part; he then asked me, If he had been short in what he last said upon that subject? I told him, No; I thought he said rather more than was necessary upon so trifling an occasion, and I did not believe that either lord Byron or the rest of the company would think any more about it.

Was there any more conversation between Mr. Chaworth and you at that time?--Yes, he asked me how long I stayed in town, and hoped we should meet often.

After this the witness went back into the room, and met Lord Byron going out as he was coming in.

Do you remember anything more that passed in the house that gave you any alarm in regard to lord Byron and Mr. Chaworth?--Yes, when I was in the room, and saw that lord Byron was not there, I began to reflect that they might possibly meet and resume their discourse; by that time the bell was rung by some of the company, and the waiter came into the room. I met the waiter, and asked him if he saw Mr. Chaworth? and he said he believed he was below-stairs; I desired he would go and seek for him immediately, and tell him I must speak to him. I was then preparing to go down myself, and the waiter came up with the account of Mr. Chaworth's being run through the body.



He went down with the rest of the company to the room where Mr. Chaworth was.

How did Mr. Chaworth appear?—He sat in the chair, leaning his head back. I went to him, and asked him how he did? He said he was run through the body, and had not five minutes to live. Upon my asking how it happened? he said, he and lord Byron went into the room and fought. I then told him, I hoped his wound was not so bad as he apprehended; he said he was sure he was run through the body, for that my lord was very near him, and had shortened his sword.

Did Mr. Chaworth relate anything to you about his going into the room?—He did; and said, when he turned round from shutting the door, he saw lord Byron with his sword half-drawn, and calling upon him to defend himself.

What did Mr. Chaworth do when lord Byron so called upon him?—He drew, and they immediately engaged.

At the time you left the room at the Star and Garter, were all the company sober or not?—I think perfectly so.

LORD BYRON—What reason had you to imagine, that if I and Mr. Chaworth should meet we should resume the discourse?—It was very likely that they should come together, as I met my lord so soon after I had parted with Mr. Chaworth.

LORD BYRON—Was it not on account of the words which you heard repeated in the room, and what passed after Mr. Chaworth and you went out of the room together?—It was partly from the words I

heard in the room, and partly from Mr. Chaworth's having questioned me about them.

LORD MONTFORT—Why did you follow Mr. Chaworth out of the room?—Mr. Chaworth took hold of my arm, and asked me to speak with him.

LORD MONTFORT—How came you not to follow lord Byron downstairs?—I was returning into the room, and was not sure it was lord Byron till I came into the room and saw he was not there.

LORD BERKELEY—Did Mr. Chaworth leave his sword in the room as well as his hat?—I do not believe he did; I think he never took his sword off.

LORD MANSFIELD—Whether lord Byron took his hat with him when he went out?—I do not know at all.

EARL TALBOT—When you reproved Mr. Chaworth for having gone too far in what he said to lord Byron, by saying, I think he said rather more than was necessary on so trifling an occasion, did you not think the words he had said were of force enough to a man of strict honour, and nice sensibility, to require an explanation?—I did at first; but as they were spoke without much heat or passion, and no apparent notice taken either by lord Byron, or the rest of the company, I thought they might admit of a different construction.

*Francis Molyneux*, examined by Cornwall, gave an account of the conversation between Lord Byron and Mr. Chaworth.

Mr. Chaworth said he had always been strict in preserving his game, and that that was the best method of preserving them; lord Byron said he had

never been strict, and that he had more game about Newstead than anybody else.

Was any bet proposed by any of the company?—There was.

By whom?—By lord Byron.

What were the terms of the bet?—He offered to lay one hundred pounds that he had more game about Newstead than sir Charles Sedley or Mr. Chaworth.

Did Mr. Chaworth take the bet?—Mr. Chaworth said if he would call for pen, ink, and paper, he would lay him the wager.

Was nothing more said upon that subject?—Lord Byron said he should be glad to know where sir Charles Sedley's manor was.

What answer was made to that question?—Mr. Chaworth said, Nuttall; but if your lordship should have anything to say to sir Charles Sedley, he lives at one Mr. Cooper's in Dean-street.

Was anything further said by any person, or was that the whole?—Lord Byron asked again where sir Charles Sedley's manor laid.

And what answer was given to lord Byron?—Mr. Chaworth said, he had already informed lord Byron where sir Charles Sedley lived; and his lordship knew where he lived, if he had anything to say to him.

After this, the conversation lasted for an hour or so; during a part of which Lord Byron conversed with the witness, next whom he sat. He conversed about the Duke of York's house, and seemed to be in a good humour. The witness corroborated the others as to the order in which

Mr. Chaworth, Mr. Donston, and Lord Byron left the room.

*Cæsar Hamkins*<sup>1</sup> was called and examined by the Attorney-General; he said that he was sent for a little after eight, to see Mr. Chaworth. On his arriving, Mr. Chaworth gave him an account of his symptoms, and after the witness had made his examinations, asked him whether he was in any immediate danger. The witness told him his wound was serious, and after Mr. Chaworth had spoken to him of his private affairs, asked him in what situation he was when he received the wound.

To which question, as I apprehend to make his answer more explicit, he gave me the following detail:—That lord Byron and he came into that room together, lord Byron leading the way, and walking on towards the further end of the room, said something very rough to him; upon which he said, Then, my lord, it is right I should fasten the door (I am not sure whether he said fasten the door, or bolt the door); that he turned to the door, and did fasten it; that as he turned round again towards lord Byron, he saw his lordship with his sword either drawn or nearly drawn, upon which he immediately drew his

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<sup>1</sup> *Sir Cæsar Hamkins* (1711-1786), great-grandson of a colonel of the same name who served in the time of Charles, was appointed surgeon to the Prince of Wales in 1737; he was also sergeant-surgeon to George II. and George III. He was the father of a well-known surgeon of the same name, and grandfather of the late Provost of Oriel.

own, and at the same time that he presented the point of his sword to his lordship, that he made a thrust at him, which he thought had hit him, and dangerously wounded or killed him; that immediately afterwards he perceived his lordship shortening his arm to make a thrust at him, which he thought to have parried with his left hand, with which he endeavoured to catch the point of the sword; and he looked at his hand once or twice, thinking he had either scratched or wounded his hand in the attempt; that he perceived the sword enter his body, and imagined it had gone in deep, for that he felt a pain quite through to his back; that immediately after he laid hold of the gripe of lord Byron's sword, and struggling with him for it, and being the stronger man, he disarmed his lordship, saying to him, he hoped he was not dangerously wounded; that lord Byron replied something to the same purpose to him; and, I think, added, that lord Byron said, That he hoped now he would allow, or acknowledge that he (his lordship) was as brave a man as any in the kingdom; and some considerable time passed afterwards at the tavern, before Mr. Chaworth was carried to his own house.—During this time he recollected some other little circumstances relative to his private affairs, on which account he desired the gentlemen who were then in the room to retire again. When he had mentioned what he had to say upon that subject, he repeated to me again with great earnestness, what I had heard him declare before, two or three times in different expressions, equally strong; that pained and distressed as he then was, and in immediate danger of death, he had rather be in his present situation, than live under the misfortune of

having killed another person. This strong expression of humanity led me to ask him if there had been any serious cause of offence between lord Byron and himself, that should have occasioned the quarrel? He paused for a moment or two, as one recollecting himself, and then answered, No, nothing that might not have been explained and made up.

After this the witness caused another surgeon, Mr. Adair,<sup>1</sup> and a physician, Mr. Addington,<sup>2</sup> to be called, and Mr. Chaworth died the next morning. He then gave an account of the wound of which Mr. Chaworth died, which was such as might have been expected.

*Mr. Adair* was also called to speak as to the nature of the wound.

*John Sherwin*, examined by Serjeant Glynn, gave the same account of the conversation about the game and the manors, as had been given by the other witnesses. When Mr. Chaworth left the room, he asked Mr. Donston to come with

<sup>1</sup> James Makillrik Adair (1728-1802) began to practise in Antigua, and wrote against the abolition of the slave-trade. He also wrote a treatise on the yellow fever, and a volume of medical advice for persons frequenting Bath.

<sup>2</sup> Anthony Addington (1713-1780), the father of the first Viscount Sidmouth, was educated at Winchester and Trinity College, Oxford. He graduated M.D. in 1744, and settled as a physician in Reading. In 1754 he moved to London, where Lord Chatham became one of his patients, and the professional connection ripening into friendship, made use of him privately for confidential communications. He retired from practice in 1780, but lived to see his son Speaker.

him, which he did, returning again in almost two minutes. The witness also gave an account of finding Mr. Chaworth wounded, but did not add to what had already been related by the other witnesses.

*The Hon. Thomas Willoughby*, examined by Mr. Stowe, gave much the same account of the dinner and the quarrel as the others, only adding that Lord Byron had got up to go when Mr. Donston returned into the room.

*John Edwards* was the waiter at the Star and Garter. The company called for a bottle of claret, and he went down to the bar, and called to his master, who was in the larder, to get some wine. While he was standing at the bar waiting for the wine, he was called for once or twice. When he came up, Lord Byron asked him if one of the rooms on the stairs was empty; he said it was.

What did you do then?—I had a candle in my right hand; I opened a green baize door, with a brass lock, with my left hand, and showed lord Byron and Mr. Chaworth into the room; I set the candle upon the table in the room; I quitted the room, and pulled the inner door after me; the outer door shuts with a pulley. I went downstairs immediately for the bottle of wine, which I had desired my master to get; I met him by the bar or the cellar door (which are together) with the wine in his hand. I took it from him, and went upstairs to the Nottinghamshire Club, up two pair of stairs. I drew the cork, and heard

the bell ring in the room into which I had showed lord Byron and Mr. Chaworth, twice, while I was decanting the wine. When I had decanted the wine, I came downstairs, and found I was too late to answer the bell, as is common for a waiter that shows the room. I heard somebody had been in. When I came to the ground-floor, the first person I spoke to was my master. He clapped his hands together, and said, Mr. Chaworth is wounded, or lord Byron has wounded Mr. Chaworth; the expression I cannot exactly tell.

What was the size of the room you showed lord Byron and Mr. Chaworth into?—In some parts of the room, I have measured it is sixteen feet long, and sixteen feet broad in some parts; the chimney is taken out of the corner of the room.

What kind of candle did you leave in the room?—A common tallow candle, about eight in the pound. There was no other candle in the room, nor other light, to my knowledge. There was a fire in the room, but it was rather down.

LORD BYRON—Was there any table in the room?—There was a table in the room.

Did you set a candle upon it?—I did.

In what part of the room did you leave me and Mr. Chaworth standing?—Both walked towards the fireplace.

*James Fynmore* was the landlord of the Star and Garter. A waiter told him that two gentlemen of the Nottinghamshire Club wanted to speak with him in room No. 7. He went there, and found Lord Byron and Mr. Chaworth standing close together.



Mr. Chaworth said, Here, James, take my sword, for I am disarmed, or I have disarmed him, I do not know which. I turned to lord Byron, and said, Pray, my lord, give me your sword; on which lord Byron gave me his sword, and I took it, and went downstairs with it. As I was going out of the room, either one or both of them called after me, and desired me to get help immediately; I went down the stairs with the two swords, and laid them upon the table, in a room at the bottom of the stairs, and then called Mr. Hawkins.

LORD BYRON—Did you not carry up the club-book into the room where we dined?—I went up at seven o'clock, as is the custom, with the book and a bill.

Did you wait the settling of the bill?—I did.

Did not Mr. Chaworth settle it?—Mr. Chaworth settled the book that day.

What time might it take up in settling it?—It was done in five or six minutes.

Did you make any observation upon Mr. Chaworth's manner of settling it, or observe anything particular?—No, I think not anything particular.

Did you observe him to be ruffled or confused?—In one particular only; the book is marked with lines ruled in checks, each gentleman's name is upon a line, and against each name, if the gentleman be present, there is a 0; if absent, 5s. The only remark I made of any flurry in Mr. Chaworth, was, that he put 5s. against lord Byron's name instead of a 0; upon which I said, Sir, my lord is present; upon which, he altered it and made a 0.

The room was sixteen feet square, except that the chimney was taken out of one of the corners.

The chairs were pretty large; they might take up two feet each into the room. The door had a brass lock, and there was a catch underneath; a little sliding bolt. The door was not bolted when he first went into the room.

VISCOUNT FOLKESTONE—Did lord Byron deliver up his sword readily?—When Mr. Chaworth gave me his sword I turned to lord Byron for his.

VISCOUNT FOLKESTONE—Did he give you his sword directly?—I took hold of it, and his lordship made no objection.

VISCOUNT FOLKESTONE—The reason I mention this, is because the counsel in opening said, that lord Byron delivered up his sword with reluctance.

*John Gothorp* was a waiter at the Star and Garter, and answered the bell in No. 7 at about a quarter past eight. He found Lord Byron holding Mr. Chaworth pretty much as the other witnesses had described, and Lord Byron told him to call Fynmore at once, which he did. When he came up he found the door fastened, but not with the bolt.

*William Man* attended Mr. Chaworth as an apothecary. He found his servant in the room with him, and Mr. Hawkins; and Mr. Levinz came in while he was there. There was a conversation between Mr. Chaworth and Mr. Levinz concerning the accident that had happened.

Mr. Chaworth said some few words arose at dinner concerning who had the most game upon their estates.

About two hours after Mr. Chaworth had occasion to go downstairs; upon his returning back he was met by lord Byron, who said, Chaworth, I want to speak to you; a waiter passing by at the same time, lord Byron said, Waiter, show us a room. They went into the room, and first Mr. Chaworth said, My lord, we will shut the door, or else some person will hear what we say. Mr. Chaworth, when he turned round from shutting the door, saw lord Byron with his sword half-drawn, who said, Chaworth, draw! Mr. Chaworth drew immediately, and made the first pass, and entangled his sword in my lord's waistcoat; he then endeavoured to disarm lord Byron, and my lord gave him a push or a blow, and then run him through.

Was this the whole of what Mr. Chaworth declared at that time?—No.—Relate the whole.—Mr. Chaworth said, when he was first desired to walk into the room by lord Byron, he did not in the least imagine that he was going to be offered a challenge.

Was that the whole?—No.

Go on.—Some time after, Mr. Chaworth said, This will not in the least be to my lord Byron's credit.

Is that the whole of what was said?—Yes, my lords.

It appearing some time after five o'clock that the prosecution had only two more witnesses to call, the House adjourned.

On Wednesday, April 17th, the lords returned in the same order as on the day before, except that the Lord High Steward walked after his royal highness, the Duke of York; and after the proclamations had been made the trial proceeded.

*William Levinz* was uncle to the deceased, and saw him at his house on the 26th of January. As soon as he came Mr. Chaworth desired him to send for a lawyer, to make a new will. Serjeant Hawkins, Mr. Adair, Mr. Willoughby, and Mr. Hewett were in the next room.

I told them that Mr. Chaworth had desired me to send for a lawyer, but that I was so totally deprived of recollection, I could not remember where any one lived ; upon which Mr. Hawkins told me, there was one Mr. Partington, who lived in that neighbourhood, that was a man of character, and that if I pleased, he would send for him. Mr. Partington came, I believe, in a quarter of an hour.

As soon as Mr. Partington had received his instructions, and was making the will in the next room, the witness went to Mr. Chaworth and asked him how the unfortunate affair had happened.

He told me that lord Byron took him into a room ; upon which Mr. Chaworth said, If we are to talk, I had better shut the door, or else they may overhear what we say. Upon his shutting the door, the first thing he saw when he turned his head about, was lord Byron's sword half-drawn, upon which he drew his as quick as possible, and got the first pass at him ; and finding his sword engaged in something, he thought it was my lord's body, and therefore wished to disarm him, and in endeavouring to close in for that purpose, my lord shortened his sword, or arm,

I am not positive which, and gave him that mortal wound. From that time till the time the will was executed, which was about three in the morning, Mr. Chaworth's head was so full of his private affairs that I cannot say I heard him mention the unfortunate affair, till after the will was executed, when I asked him, Was this fair? But he made no answer that I could hear, but said he saw my lord's sword half-out, and, knowing his man, he drew his sword as quick as he could; that he had the first pass at him, and then my lord wounded him, and after that he disarmed his lordship; when my lord swore he was as brave a man as any in England. He said twice to me, Good God! that I should be such a fool as to fight in the dark; for indeed there was very little light. He said, he did not believe lord Byron intended fighting when they went into the room; but seeing him up by the door, he believed he thought he had him at an advantage; and the first thing he saw, upon turning his head, was his lordship's sword half-drawn. He said he died as a man of honour, but he thought lord Byron had done himself no good by it. I asked him several times in the night, how this affair began above stairs? He always answered, It is a long story, and it is troublesome to me to talk.

*Thomas Walley Partington* was the solicitor who was called in to make Mr. Chaworth's will. The only important addition that he made to the evidence that had already been given was that after the execution of the will, and after Mr. Levinz had asked Mr. Chaworth whether the fight was fair, he heard Mr. Chaworth say some-

thing about Lord Byron's sword being drawn; upon which he asked Mr. Chaworth whether Lord Byron's sword was drawn when he came into the room. The witness wrote down Mr. Chaworth's answer in company with other gentlemen in the room below, and after what he first wrote had been objected to, he wrote something which they all agreed to as correct, which was as follows:—

Sunday morning, the 27th of January, about three of the clock, Mr. Chaworth said, that my lord's sword was half-drawn, and that he, knowing the man, immediately, or as quick as he could, whipt out his sword, and had the first thrust; that my lord wounded him, and he disarmed my lord, who then said, 'By God, I have as much courage as any man in England.'

A discussion then arose as to the admissibility of the paper, and the Lord High Steward eventually held that the witness might use it to refresh his memory. The paper was never read over to Mr. Chaworth, but was agreed to by the gentlemen who heard it, as being the substance of what Mr. Chaworth said.

*The Earl of Denbigh* desired that Mr. Levinz might be recalled, and on a difference arising as to this, the lords adjourned to the Chamber of Parliament. On their return the Attorney-General was informed that he might proceed with his evidence. He, however, said that

though, had he supposed that any doubt would be raised as to the truth of the contents of the paper, he would have called all the witnesses to substantiate it, yet he would not now trespass on their lordships' time, and that his case was closed.

The Solicitor summed up the case for the prosecution, pointing out that the only excuse that could prevent Lord Byron's act from being murder, was that he had acted on overpowering provocation; and that of this the evidence showed no probability at all. If the purpose for which Lord Byron wanted to speak with Mr. Chaworth on the stairs was to be explained by what happened below, it was obvious that his purpose was deliberate, and without provocation; if he had not that purpose in his mind at the time, were not Mr. Chaworth's suspicions justified, that Lord Byron attacked him when he thought he had him at a disadvantage?

*Lord Byron*, on being called on to make his defences, said he had no witnesses, but he had reduced his defence to writing, which he handed in to the lords.

In this writing, after explaining his ignorance of the nice distinctions of the law, and his inexperience in matters of the present kind, he gives an account of the dinner of the Nottinghamshire Club, and the conversation about game, which is in substantial agreement with the story

told by all the other witnesses. He then goes on :—

This discourse lasted some time ; and during the whole of it, I was concerned to observe that the deceased gentleman, without any cause, treated me in a slighting and contemptuous manner.

Towards the conclusion of it, he with some heat said, There would be no game in the country, and that I should not have a single hare on my estate, if it was not for the care taken by himself and sir Charles Sedley to preserve the game on their manors ; and added that he had more game on five acres than I had on all my manors. The proposal of a bet followed, but some of the gentlemen interfered, and no bet was made.

Mr. Chaworth again mentioned sir Charles Sedley's manors, and his care of the game ; upon which I happened to ask what manors of sir Charles Sedley he meant ; when he answered, Nuttall and Bulwell ; to which I replied, I did not understand how that could be, for though I knew Nuttall was sir Charles Sedley's, yet Bulwell-park was mine.

Mr. Chaworth answered, that besides Bulwell-park there was the lordship of Bulwell town (a point which I believe may formerly have been in dispute between Mr. Wentworth's family and mine, but has long lain dormant), and that sir Charles Sedley had a deputation for that lordship.

Upon which I made some insignificant remark on the uncertainty of deputations, as they were liable to be recalled at any time, or something to that purpose.

Hereupon, to the best of my recollection, Mr.



Chaworth replied in the following words :—Sir Charles Sedley, my lord, lives at Mr. Cooper's at such a place, and, I doubt not, will be ready to give your lordship satisfaction about his manors, if you have anything to say concerning them ; and as to myself, you know where I live, and I shall be ready to answer your lordship whenever you will call upon me, if you have anything to say to me.

These words, so unexpected, of such import, uttered, and repeated in the manner they were, would not admit of any reply.

This put an end to any further remarks from Lord Byron, and as he was at the other end of the table from Mr. Chaworth, he could not have made any private intimations to him for a future meeting without being observed by the rest of the company. Soon after this the bill was brought in, and settled by Mr. Chaworth, after which Lord Byron saw him go behind a screen which entirely hid the door, and concluded that he was gone. He stayed some time to settle his bill, and then taking his hat, left the company. As he was going behind the screen he remembers that somebody passed him, and he believes it might be Mr. C. Donston, but as it was in the shade he could not well distinguish him.

When I opened the door, I saw Mr. Chaworth on the landing-place, near the upper step of the stairs, with his face towards the door, and his back to the stairs, not moving, as he appeared to me, but rather as if he waited for somebody coming out.

The landing-place is so narrow, that to go without the door of the room was unavoidably to pass near Mr. Chaworth, who immediately said, 'Has your lordship any commands for me?' which he spake in a very particular and significant manner, and not (to my apprehension) as a question either of civility or respect.

I only answered, 'I should be glad of an opportunity of speaking a few words to him.' Mr. Chaworth replied, 'That the stairs were not a proper place, and, if I pleased, we would go into a room.'

They then both called for a waiter, and asked him for an empty room, which he showed them, putting his candle upon the table, which was towards the middle of the room, whilst they went to the fire; and there the waiter left them.

I then said to Mr. Chaworth, as we still continued standing by the fire, 'How am I to take those words you used above, as an intended affront from sir Charles Sedley, or yourself?' Mr. Chaworth replied, 'Your lordship may take them as you please, either as an intended affront or not, and I imagine this room is as fit a place as any other to decide this affair in.'

Then turning round he said he would bolt the door to prevent any interruption, or anybody interfering, or words to that effect. Accordingly he went to the door and fastened it. In the meantime, his intention being but too manifest, by this action and

his last expression, I went round to the further side of the table, towards the most open part of the room, which your lordships have been informed by Fynmore is about sixteen feet square, and the furniture did not leave a vacant space of more than twelve feet in length, and as I believe, five feet in breadth, where it was my unhappy lot to be obliged to engage.

Mr. Chaworth was now turned round from bolting the door, and as I could not any longer continue in doubt of his intention, it was impossible for me in such a situation to avoid putting my hand to my sword, and I believe I might at the same time bid him draw, or use some other words of the like import, though I cannot now be certain of the expression.

Mr. Chaworth immediately drew his sword, and made a thrust at me, which I parried; he made a second, which also missed of its effect; and then finding myself with my back against the table, with great disadvantage of the light, I endeavoured to shift a little more to the right hand, which unavoidably brought us nearer to each other, and gave me an opportunity to perceive that the deceased gentleman was making a third pass at me. We both thrust at the same time, when I found Mr. Chaworth's sword against my ribs, having cut my waistcoat and shirt for upwards of eight inches; and I suppose it was then that he received the unlucky wound, which I shall ever reflect upon with the utmost regret.

Mr. Chaworth paused, and said, 'I am afraid I have killed you': at the same time putting his left hand to his belly, which, on withdrawing it again, I could perceive was bloody.

I expressed the like apprehension on his account;

and Mr. Chaworth telling me that he was wounded, I said, I was sorry for it, and went to the bell near the fire, to ring it, in order to call for assistance, whilst the unfortunate gentleman, being still near the door, unbolted it.

I then returned to him ; and as I was supporting him to an elbow-chair which stood near the fire, I could not help observing, that he might thank himself for what had happened, as he had been the aggressor ; that I supposed he took me for a coward, but I hoped I had as much courage as another man. Mr. Chaworth replied, My lord, all I have to say is, you have behaved like a gentleman.

After this Fynmore came in and was sent for a surgeon, and the other gentlemen also came in from upstairs, and Lord Byron continued there for some time to give all the assistance he could, and waited in a room below till Mr. Chaworth was removed to his own house.

Lord Byron had several witnesses waiting to give evidence of the friendly relations previously existing between him and Mr. Chaworth ; but as these had not been denied, he needed not to call them. On the one hand, no premeditation had been shown on his part ; on the other, most of the witnesses agreed in declaring the provocation, challenge, and insult offered to him ; 'and your lordships will not imagine that I felt them with less emotion, because my manner and my words were decent.'

After that accidental meeting (on the stairs) the time of our continuing together, which was scarce four minutes, the light, the unfitness of the place, and every other circumstance prove, in the strongest manner, that nothing could be more sudden and unpremeditated than the conflict that ended so unfortunately, and in which I received the first thrust, at the peril of my own life.

Our fighting could not be very regular, circumstanced as it was; but notwithstanding some insinuations, my own mind does not charge me with the least unfairness.---My lords, it is very plain from the evidence, that Mr. Chaworth had not cooled; and if the infirmity of his temper was such, as not to have recovered itself in so short an interval, though he had done the injury, your lordships, I hope, will at least make that allowance which the law permits, to the like infirmity of nature in him who hath been injured.

The prisoner was then taken from the bar, and the House was adjourned to the Chamber of Parliament.

Afterwards the peers returned, and being seated, the Lord High Steward asked each his opinion on the question of Guilty, or Not Guilty? beginning with the junior baron.

To this one hundred and nineteen answered that they found the prisoner Not Guilty of murder, but Guilty of manslaughter; and four found him Not Guilty.

Lord Byron, on being asked what he had to

say why judgment should not be pronounced on him, claimed the benefit of the statute of Edward the Sixth; whereupon the Lord High Steward acquainted him that he was allowed the benefit of that statute, and he was discharged, paying his fees.

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